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(2014) 310 ELT 495

High Court Of Punjab And Haryana At Chandigarh

Case No: C.E.A. No. 4 of 2014 (O and M)

Commr. of C. Ex.	APPELLANT
Vs	
Mohindra Iron and Steel Indus.	RESPONDENT

Date of Decision: May 23, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11A, 35G, 38A, 3A
- Finance Act, 2001 - Section 131, 132

Citation: (2014) 310 ELT 495

Hon'ble Judges: Jaspal Singh, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Kamal Sehgal, Advocate for the Appellant

Judgement

@JUDGMENTTAG-ORDER

Ajay Kumar Mittal, J.
This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short, "the Act") against the order dated 5-6-2013, Annexure A3 passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, (in short, "the Tribunal") in Appeal No. E/776/2010, proposing to raise following substantial questions of law:--

"(i) Whether under the Compounded Levy Scheme, the provisions of erstwhile Rule 96(ZP) permitting imposition of penalty equal to the amount of duty for delay in payment of duty, without any discretion and without having regard to the extent and circumstances of delay, could be held to be ultra vires the Act and the Constitution of India?

(ii) Whether mandatory penalty equal to amount of duty on the assessee in case of violation of the provisions of erstwhile Rule 96(ZP) of Central Excise Rules, 1944 could

be waived at the discretion of any authority having regard to the extent and circumstances of delay in payment of duty?

(iii) Whether provisions of Section 11A of the Central Excise Act, 1944 regarding limitation shall apply to the compounded levy scheme, being a comprehensive scheme in itself with general provisions of Central Excise Act arid Rules excluded?

(iv) Whether the provisions of Section 38A of the Central Excise Act, 1944 inserted by Section 131 of the Finance Act, 2001 (validation of action taken has been provided for by virtue of Section 132 of the Finance Act, 2001 shall be applicable in respect of obligation and liabilities incurred under Rules 96ZO and 96ZP of erstwhile Central Excise Rules, 1944 before the same were omitted, notwithstanding the omission of Section 3A w.e.f 11-5-2001?

A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent M/s. Mohindra Iron and Steel Industries, Mandi Gobindgarh was working under Compounded Levy Scheme from March, 1998 to March, 2000 and opted to discharge its duty liability under Rule 96ZP(3) of the erstwhile Central Excise Rules, 1944 (in short, "the Rules") read with Section 3A of the Act which provides that where a manufacturer fails to pay the whole of the amount of duty payable for any month by the 10th day of such month, he shall be liable to pay the outstanding amount of duty along with interest at the rate of 18% per annum for the period from 11th day of such month till the date of actual payment of the outstanding amount and a penalty equal to the amount of duty outstanding. During the course of scrutiny of RT-12 returns of the respondent, it was observed that the respondent had failed to discharge duty liability of Rs. 5000/- for each of the month from March, 1998 to February, 2000 within the prescribed time limit. Accordingly, show cause notice dated 14-5-2004 was issued to the respondent to show cause as to why penalty should not be recovered under Rule 96ZP(3) of the Rules equal to the amount of duty not deposited within the stipulated time. The adjudicating authority vide order dated 26-2-2009, Annexure A.1 imposed upon the respondent a penalty of Rs. 1,15,000/- under Rule 96ZP(3) of the Rules read with Section 3A of the Act for not depositing the duty within stipulated time. Aggrieved by the order, the respondent filed appeal before the Commissioner (Appeals). Vide order dated 8-2-2010, Annexure A.2, the Commissioner (Appeals) set aside the imposition of penalty for late deposit of duty from March, 1998 to April, 1999 on the ground that proceedings for the same were initiated after five years from the relevant date. However, the imposition of penalty of Rs. 5000/- for each of the month from May, 1999 to February, 2000 was upheld. Not satisfied with the order, the department filed appeal before the Tribunal. Vide order dated 5-6-2013, Annexure A.3, the appeal was dismissed by the Tribunal by relying upon the judgment of this Court in Commissioner of Central Excise Vs. Hari Concast (P) Ltd. . According to the appellant, the SLP against the said judgment is pending in the Apex Court. Hence the instant appeal by the revenue.

2. Learned counsel for the appellant relied upon judgment of the Apex Court in Collector of Central Excise, Jaipur Vs. M/s. Raghuvar (India) Ltd., to contend that the penalty in the present case had been validly imposed as it was levied within reasonable time from the date when it came to the notice of the authority imposing the penalty.

3. After hearing learned counsel for the appellant, we do not find any merit in the aforesaid contention.

4. A Division Bench of this Court in Commissioner of Central Excise, Chandigarh v. M/s. Hari Concast (P) Limited, CEA No. 35 of 2007, decided on 20-4-2009, after relying upon judgment of the Apex Court in State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., held as under:--

"It is conceded position that proceedings against the respondent-assessee for imposing penalty were initiated after the expiry of period of five years. Although there is no statutory period of limitation yet reasonable period of limitation for initiating proceedings is five years. In that regard reliance may be placed on the judgment of Hon"ble the Supreme Court in the case of State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., ."

5. In so far as judgment in Raghuvar (India) Limited"s case (supra) is concerned, therein also, the Apex Court held that any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the Courts to import any specific period of limitation by implication, where there is really none, though Courts may always hold when any such exercise of power had the effect of disturbing rights of a citizen that it should be exercised within a reasonable period. The period of five years has been held to be reasonable period for initiating penalty proceedings. Thus, no advantage can be derived by the revenue from the aforesaid pronouncement. In view of the above, the Tribunal had rightly upheld the order of Commissioner (Appeals) deleting the penalty for the period March, 1998 to April, 1999. Thus, no substantial question of law arises and consequently, finding no merit in the appeal, the same is hereby dismissed.