

(2014) 07 MAD CK 0030

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 924 of 2014

Bharat Steel Rolling Mills

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 24-07-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37, 3A, 6, 6(1)
Finance Act, 2001 — Section 121

Citation : (2015) 316 ELT 443 : (2015) 30 GSTR 1

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Advocate : Mohammed Shaffiq, Advocates for the Appellant; V. Sundareswaran, Advocates for the Respondent

Judgement

G.M. Akbar Ali, J.—The appellant is a manufacturer of various hot re-rolled products and registered with Central excise. They have opted for payment of duty on the basis of annual capacity of production (ACP), as per Notification No. 48/1997-CE (N.T.), dated August. 1, 1997 , for which, duty shall be levied under section 3A of the Central Excise Act, 1944. The appellant had to pay a sum equivalent to 1/12th of the amount calculated at the rate of Rs. 300 multiplied by annual capacity of production in metric tonnes. They have to pay latest by tenth of each month, as per sub-rule (3) of rule 3 of the Central Excise Rules. If an assessee fails to pay the whole amount of duty, it is recoverable along with interest at 18 per cent, from 11th day of such month till payment and liable for penalty also. The appellant who was liable to pay duty for the period from April, 1999 to March, 2000, worked out to Rs. 23,37,816, paid the amount but not on the due dates and thereby contravened the Rules.

2. Therefore, a show-cause notice was issued for payment of interest as well as penalty.

3. The appellant replied to the show-cause notice. According to the appellant, they are manufacturing mild steel angles, rectangular bars, twisted bars and

clearing the goods under the compounded levy scheme and therefore, they are not liable for interest and penalty. However, the original authority found that the appellant is liable to pay interest and penalty and imposed penalty of Rs. 23,37,816 and demanded an interest of Rs. 25,252 and passed an order-in-original dated July 28, 2005.

4. The appellant preferred an appeal before the Commissioner (Appeals). The learned Commissioner (Appeals) also found that the appellant failed to pay the duty within the stipulated time, however, reduced the penalty to Rs. 7,79,272 and modified the interest to Rs. 24,194. Not satisfied with this, the assessee preferred an appeal before the Tribunal.

5. The Tribunal also found that sub-rule (3) of rule 96ZP of the Central Excise Rules is applicable and rejected the appeal. Aggrieved over the same, the present appeal is preferred.

6. Heard Mr. Mohammed Shaffiq, learned counsel for the appellant and on notice, Mr. V. Sundareswaran appeared for the Revenue.

7. The learned counsel for the appellant submitted that the duty was payable under section 3A of the Central Excise Act and the Tribunal has not taken into consideration that section 3A of the Act has been omitted vide section 121 of the Finance Act, 2001 with effect from May 11, 2001. According to the learned counsel, as there is no saving clause to apply the omitted provisions to the pending proceedings the same are not sustainable. The learned counsel also submitted that vide Notification No. 6/2001-CE (N.T.) dated March 1, 2001 rule 96ZP was also omitted.

8. The learned counsel relied on a decision reported in Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, , wherein the apex court held as follows:

"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions of section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceedings shall not continue but fresh proceedings for the same purpose may be initiated under the new provision."

9. However, the learned counsel for the Revenue would submit that a similar question was raised in (Triveni Alloys Ltd. v. CESTAT [2014] 29 GSTR 625 (Mad)) C. M.A. No. 861 of 2007 and by an order dated December 5, 2013, this court has considered the omission of section 3A of the Act and subsequent notification issued under section 37 of the Act for the validation of certain actions, which have been made applicable retrospectively and confirmed the penalty.

10. Heard and perused the materials available on record.

11. According to the appellant, after the omission of section 3A of the Act with effect from May 11, 2001 and revocation of the rule 96ZP of the Rules, the Revenue officials have no authority to levy penalty under the repealed provision without a saving clause. However, this question has been answered by the Division Bench of this court in (Triveni Alloys Ltd. v. CESTAT [2014] 29 GSTR 625 (Mad)) C. M.A. No. 861 of 2007 , dated December 5, 2013. By a notification, amendments were brought in to section 37 of the Act validating certain actions taken and reads as follows (page 633):

"111. Amendment of notifications issued under section 37 of the Central Excise Act and validation of certain actions taken.--(1) The notifications of the Government of India, in the Ministry of Finance (Department of Revenue), numbers G. S. R. 448(E), dated 1st August, 1997, G. S. R. 503(E), dated 30th August, 1997 and G. S. R. 130(E), dated 10th March 1998, issued under section 37 of the Central Excise Act, shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified against each of them in column (3) of the Fourth Schedule, on and from the corresponding date mentioned in column (4) of that Schedule and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, Tribunal or any authority, any action taken or anything done or purported to have been taken or done under the said notifications, shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if, the notifications as amended by this sub-section had been in force at all material times.

(2) Notwithstanding the omission of section 3A of the Central Excise Act by section 121 of the Finance Act, 2001 (14 of 2001) and the expiration of the notifications referred to in sub-section (1), for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules and issue or amend notifications under section 3A read with section 37 of the Central Excise Act, retrospectively, at all material times.

(3) Any action taken or anything done or omitted to be done or purported to have been taken or done or omitted to be done under the notifications referred to in sub-section (1) at any time during the period commencing on or from 1st day of August 1997 and ending with the day, the Finance (No. 2) Bill, 2000 receives the assent of the President, shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be

done as if the amendments made by sub-section (1) had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, the Tribunal or other authority,--

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods under the said notifications, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendments made by sub-section (1) had been in force at all material times;

(b) no suit or any other proceedings shall be maintained or continued in any court, the Tribunal or other authority for any action taken or anything done or omitted to be done in respect of any goods under the said notification, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or omitted to be done as if the amendments made by sub-section (1) had been in force at all material times;

(c) recovery shall be made of such amounts of duty or interest or penalty or fine or other charge which have not been collected or, as the case may be, which have been refunded, as if the amendments made by sub-section (1) had been in force at all material times.

Explanation.--For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."

12. Therefore, the contentions raised by the appellant is not sustainable and the case law referred by the appellant has been considered by the Division Bench. Therefore, the said judgment has no relevance to the present case.

13. As far as the penalty is concerned, the Commissioner (Appeals) has reduced the penalty and the Tribunal was right in upholding the order of the Commissioner (Appeals).

14. Therefore, there is no question of law that arises for consideration in this appeal and accordingly, the appeal is liable to be dismissed. In the result, the civil miscellaneous appeal stands dismissed and Final Order No. 1339 of 2009, dated November 21, 2008 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai is confirmed.