(2010) 10 AHC CK 0086

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 260 (Tax) of 2004 and C.E.A. (Defective) No. 135 of 2004

Cattle Remedies APPELLANT

Vs

CESTAT RESPONDENT

Date of Decision : 07-10-2010

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 35G

Citation : (2011) 264 ELT 344

Hon'ble Judges : Yatindra Singh, J;Rajes Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Petitioner has filed Writ Petition No. 260 (Tax) of 2004 challenging the order of the Tribunal dated 29-9-2003 [2004 (163) E.L.T. 79 (Tribunal)]. Subsequently, against the same order of the Tribunal an appeal, Central Excise (Defective) No. 135 of 2004, has been filed u/s 35G of the Central Excise Act (the Act). The certified copy of the order of the Tribunal has been filed along with the writ petition and a request has been made for dispensing with the requirement of filing of certified copy of the order in appeal. The request is accepted and filing of certified copy of the Tribunal''s order in appeal is dispensed with.

2. Since the Petitioner has filed appeal against the same order of the Tribunal, the Petitioner is not pressing the writ petition and is, accordingly, dismissed.

3. The appeal u/s 35G of the Act has been filed against the order dated 29-9-2003 raising the following questions:

(i) Whether the Hon''ble Tribunal was justified in deciding the issue of limitation against the Petitioners when the circumstances of the case does not fulfill the ingredients for invoking the extended period of limitation contemplated u/s 11A of the Central excise Act 1944?

(ii) Whether the Hon''ble Tribunal was justified in deciding the issue of limitation when the same was dependent on the use of brand name and eligibility of availment of S.S.I. Exemption?

(iii) Whether the Hon''ble Tribunal was justified in deciding the issue of limitation, when the entire demand raised needs recalculation resulting in complete waiver of the same?

4. The brief facts of the case are that the Appellant was manufacturing animal feed supplements and has also started manufacturing Ayurvedic medicines in the name of Caton, Catcough and Utcrolon. The animal feed supplements was exempted from Excise Duty. However, no Excise Duty has been paid on Caton, Catcough and Utcrolon, which were Ayurvedic medicines.

5. The adjudicating authority issued show-cause notices dated 17-9-1999 and 5-10-2000 relating to the period from 1-4-1994 to 31-3-1999 and from 1994-95 to 1998-99 respectively invoking the proviso to Section 11A of the Act raising the demand of Excise Duty on such Ayurvedic medicines.

6. The Appellant filed reply. In the reply it was claimed that, being S.S.I. Unit, it was entitled for the benefit of exemption under the Notification No. 1/93 dated 28-2-1993 upto the turnover of Rs. 30 lacs. It was also contended that the proviso to Section 11-A was not applicable in the present case.

7. The adjudicating authority confirmed the demand. The Ayurvedic medicines have been classified under sub-heading 3003.30 upto 22-7-1996 and under sub-heading 3003.39 with effect from 23-7-1996 as Ayurvedic Veterinary Medicines. The claim of exemption as S.S.I. Unit has been rejected on the ground that the Appellant was using the brand name belonging to M/s. Bio-Herbs Farms, Hathras, and, therefore, not entitled for the benefit of the Notification No. 1/93. The proviso to Section 11A has been invoked on the ground that the Appellant has only made a declaration that it was manufacturing animal feed supplements and has not made any declaration about the manufacturing of Ayurvedic Medicaments and, therefore, there was suppression of correct fact from the Department.

8. Being aggrieved by the order of the adjudicating authority the Appellant filed the appeal before the Tribunal.

9. The Tribunal has held that the goods have been rightly classified under sub-heading 3003.30 upto 22-7-1996 and under sub-heading 3003.39 with effect from 23-7-1996 as Ayurvedic Veterinary Medicaments. No dispute has been raised in the present appeal in regard to the classification of the proceeding.

10. So far as the benefit of the exemption being S.S.I. Unit is concerned, the Tribunal has remanded back the matter to the adjudicating authority to reexamine the matter afresh. So far as the limitation is concerned, the Tribunal has held that the Appellant has kept secret from the Department the fact of their manufacturing of Ayurvedic Medicaments. They have been rather representing

that the goods manufactured by them are only animal feed supplements. It was the duty to disclose honestly the true nature of the goods manufactured by them. Having kept concealed those facts they had been rightly charged with the allegation of suppression of the correct facts from the Department and, as such, the extended period of limitation has been correctly invoked against them.

11. Heard Sri A.P. Mathur, learned Counsel for the Appellant, and Sri S.P. Kesharwani, learned Standing Counsel.

12. Learned Counsel for the Appellant has submitted that the Appellant was manufacturing animal feed supplements and also started manufacturing of Ayurvedic Medicaments. The manufacturing of Ayurvedic Medicaments were within the knowledge of the Department and there was no suppression of fact with regard to the manufacturing of Ayurvedic Medicaments on the part of the Appellant and, therefore, the proviso to Section 11A of the Act has been wrongly invoked.

13. Learned Standing Counsel has relied upon the findings recorded by the Tribunal.

14. We have gone through the order of the Tribunal. We do not find any error in the order of the Tribunal. The adjudication order reveals that the Appellant has, in the reply, admitted that they were manufacturing Ayurvedic product including Ayurvedic medicines but under the bona fide belief the said items have not been disclosed. No document has been adduced to establish that at any point of time the Appellant has disclosed to the Department that they were manufacturing Ayurvedic medicines. Thus, it is a case where Appellant has suppressed the facts of manufacturing of Ayurvedic medicines.

15. In view of the above we do not find any error in the order of the Tribunal in confirming the order of the adjudicating authority invoking the proviso to Section 11A of the Act. Accordingly, the appeal fails and is dismissed.

16. In the result, both writ petition as well as appeal are dismissed.