
(2009) 04 SHI CK 0055
In the High Court Of Himachal Pradesh

Commissioner, Central Excise

APPELLANT

Vs

Indian Magnetics Ltd. and Another

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q
Central Excises and Salt Act, 1944 — Section 11AB, 11AC

Citation : (2009) 166 ECR 171 : (2009) 244 ELT 28

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—This Excise Reference has been admitted on the following questions of law:

- i) Whether the Tribunal was right in law in vacating the demand for penalty equal to duty u/s 11 AC of the Central Excise Act, 1944 (the Act) holding that Section 11 AC of the Act came into statute Book w.e.f. 28.2.1996 only while duty in the instant case was sought to be determined under Sub-Section 2 of Section 11A of the Act by issuing Show Cause Notice on 3.12.97 & which became payable with issue of Order-in-Original No. 54/CE/99 dated 25.10.99, quite subsequent to receiving of Presidential assent for Finance Bill, 1996 (dated 28.9.96)?
- ii) Whether the Tribunal was right in law in vacating demand for penalty equal to duty when the same was also confirmed under Rule 173Q of the Central Excise Rules, 1944 (The Rules) and Rule 173Q provides for imposition of penalty three times the value of goods whereas, here only penalty equivalent to duty has been imposed?
- iii)a) Whether the Tribunal was right in law in vacating demand of interest on delayed payment of duty u/s 11 AB of the Act holding that Section 11 AB of the Act came into statute book w.e.f. 28.9.1996 only, while the interest on delayed payment was demanded quite after the period when Finance Bill (2), 1996 received Presidential assent (i.e. on 25.10.1999) while the above Finance Bill was enacted on 28.9.96;

b) that Sub-section (2) of Section 11AB of the Act can be construed as clarifying that interest can be levied only on adjudication made after the Presidential assent has been received for Finance Bill and not upon the introduction of the Finance Bill?

iv) Whether the Tribunal was right in law in allowing benefit of wastage of 27% to the party in respect of suppressed production/clandestine removals covered by Order-in- Original No. 54/CE/99 when the allegation of suppressed production was based upon the concrete evidence/document like date-wise dispatch reports, monthly MIS feeder report and the shortage detected and not based upon the total raw material consumed and wastage which originated in the course of manufacture?

v) Whether the Tribunal was right in law in vacating the penalty on Sh. Satinder Kapoor imposed vide Order-in-Original No. 54/Ce/99 dated 25.10.99 when the Tribunal itself in the Para 16 of the Order supra have held that Sh. Satinder Kapoor was party to the evasion of duty and is liable for penalty under Rule 209A of the Rules.

2. It is not necessary to give detailed factual background of the case since the imposition of the excise demand is not disputed before us. It was held by all the authorities that the manufacturer had clandestinely removed certain goods manufactured by the Company. On receipt of some secret information one tempo was intercepted and huge amount of Video and Audio tapes were seized on which duty had not been paid. It was found that the manufacturer had evaded duty. Show cause notice was issued to the manufacturer on 23.7.1993 and the Collector imposed duty of Rs. 3,82,13,593.13 on the Company. The goods seized from the tempo were confiscated along with the vehicle. Personal penalty of Rs. one crore was imposed on the Company and penalty of Rs. 50 lakhs was imposed upon Sh. Satinder Kapoor, Managing Director of the Company. Thereafter, the manufacturer and the Managing Director filed an appeal before the Tribunal which was allowed and remitted to the Assessing Officer. The duty was reduced to Rs. 2,39,68,354/-. The manufacturer was directed to pay interest @ 20% p.a. on this amount w.e.f. 28.9.1996 till date of payment u/s 11 AB of the Central Excise Act, 1944 (hereinafter referred to as the Act). Penalty of Rs. 2,39,68,344/- i.e. a sum equivalent to the duty assessed was imposed on the manufacturer u/s 11AC of the Act read with Rule 173Q of the Central Excise Rules, 1944. Personal penalty of Rs. 10 lakhs was imposed upon the Managing Director Sh. Satinder Kapoor. This order was challenged by the manufacturer and the Managing Director before the learned Tribunal. The learned Tribunal held that the proceedings related to the period 2.11.1992 to May, 1994. It came to the conclusion that since Sections 11AB and 11AC were introduced in the statute book only on 28.9.1996 no interest or penalty could have been imposed. The personal penalty of Rs. 10 lakhs imposed upon the Managing Director was set-aside on the ground that in an earlier case for a similar offence the penalty of Rs. 10 lakhs had been reduced to Rs. 2 lakhs. This order is under challenge before

US.

3. There can be no manner of doubt that as far as Sections 11AB and 11AC are concerned, the Tribunal was right in holding that since these provisions came into the statute book w.e.f 28.9.1996 only, the authorities could not have relied upon these provisions to impose penalty and interest in respect of the proceedings relating to the period prior to 28.9.1996. However, we find that Rule 173Q of the Rules also provides for imposition of penalty up to three times of the value of the goods. In the present case the penalty imposed is only equivalent to the duty imposed on the goods. Even if Sections 11AB and 11AC were not applicable the authorities had also made reference to Rule 173Q and derived power under this Rule to impose penalty. Therefore, in our view the order of the learned Tribunal vacating the penalty is against law. We also find that the Tribunal has given no valid reasons for vacating the penalty imposed upon Sh. Satinder Kapoor. The Tribunal itself has held that Sh. Satinder Kapoor was party to the evasion of duty. Merely because in some other case penalty had been imposed upon him did not mean that in a subsequent case penalty could not be imposed upon him. In fact if a person time and again was guilty of evading duty in an illegal manner there is a valid reason to impose heavier penalty upon him.

4. In view of the above discussion, we answer question No. 1 against the Revenue and in favour of the manufacturer, question No. 2 is answered in favour of the Revenue and against the manufacturer and we set-aside the order of the Tribunal vacating the demand for penalty equal to the duty imposed. Question No. 3 is answered in favour of the manufacturer and against the department. Question No. 4 in fact does not arise since this question was never raised before the Tribunal and therefore no reference could be made. Question No. 5 is answered in favour of the Department and against the Managing Director and the penalty imposed upon Sh. Satinder Kapoor is restored.

5. The Reference is answered in the aforesaid terms.