

(2004) 01 KAR CK 0057
In the Karnataka High Court
Case No : Civil Petition No. 1709 of 2003

Commissioner of C. Ex.

APPELLANT

Vs

Shree Krishna Pipe Industries

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Central Excise Act, 1944 — Section 11 AB, 11 AC, 35 H
Central Excise Rules, 1944 — Rule 173Q, 226, 52 (A), 9 (2)

Citation : (2004) 93 ECC 477 : (2004) 165 ELT 508

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : R. Veerendra Sharma, Addl. CGSC, for the Appellant; S. Raghu, Vijaya Prabhu and M.G. Varadarajan, for the Respondent

Final Decision : Dismissed

Judgement

1. Respondent is a registered Small Scale unit manufacturing rigid PVC pipes and fittings under Chapter Heading 3917 of Central Excise Tariff Act, 1985. The Small Scale Industrial Units whose turnover is less than Rs. 50 lakhs, are not required to register themselves under the Central Excise Act, 1944 ("Act" for short) nor liable to pay Central Excise Duty. The Central Excise Officers visited the unit of the respondent on 5-2-1999 and found that as on that day, respondent's unit had cleared goods of the value of Rs. 65,09,461/-. Hence, a show cause notice was issued calling upon the respondent to show cause why (1) duty of Rs. 75,474/- on the value of clearances made in excess of the exemption limit of Rs. 50 lakhs should not be demanded; (2) why interest at 20% should not be demanded on the duty due up to the date of payment of duty; (3) why penalty u/s 11AC of the Act equal to the duty amount proposed to be demanded and recovered should not be imposed; (4) why penalty under Rule 9(2), 52(A), 173(Q) and 226 of Central Excise Rules, 1944 should not be imposed; and (5) why a personal penalty should not be imposed on the Managing Partner under Rule 209A of Central Excise Rules, 1944, Even before the said notice was issued, respondent had deposited the excise duty of Rs. 75,474/-. Ultimately, the

Additional Commissioner of Central Excise, Bangalore-III Commissionerate, by order dated 9/24-11-1999 confirmed the excise duty demanded (Rs. 75,474/-) and ordered that the amount already paid has to be appropriated. She also imposed penalty of Rs. 75,474/- u/s 11AC of the Act, a penalty of Rs. 15,000/- under Rules 9(2), 52A, 173(Q) and 226 of Central Excise Rules, 1944 and a penalty of Rs. 2,000/- under Rule 209A on the Managing Director apart from the demanding interest at 20% p.a. from the first day of the month succeeding the month in which duty ought to have been paid under the Act till the date of payment. Feeling aggrieved, respondent filed an appeal before the Commissioner of Customs and Central Excise (Appeals), Bangalore. Appeal was dismissed by order dated 28-10-2002. The order of the Appellate Commissioner was challenged before the CEGAT in Appeal No. E/53/2003. The Tribunal allowed the appeal by the following short order dated 23-4-2003 :

"This appeal arises out of and is directed against the impugned order in appeal No. 656/2002-CE., dated 28-10-2002 passed by the Commissioner of Customs & Central Excise (Appeals), Bangalore.

2. Smt. Vijaya Prakash, learned Advocate appearing for the appellants submitted that the issue relates to imposition of penalty u/s 11AC & under Rule 173Q, apart from demand of interest in terms of Section 11AB of the Central Excise Act, 1944. She submitted that since the disputed duty amount has already been deposited by the party even before the issue of show cause notice, imposition of penalty is not justified. In support of her contention, she referred to the decision of the Tribunal in the case of Rashtriya Ispat Nigam Ltd. v. CCE, Visakhapatnam, reported in 2003 E.L.T. 285 (Tribunal) = 2003 (54) RLT 317 (CEGAT - Ban.).

3. Taking into consideration of the facts and circumstances of the case and following the ratio of the aforesaid decision of the Tribunal, we accept the contention of the party. Accordingly, the appeal is allowed with consequential relief."

2. Feeling aggrieved. Department has filed this petition u/s 35H of the Act seeking a direction to the Tribunal to refer the following questions of law to this Court:

(1) Whether it was correct and proper for the Tribunal to have vacated the penalties imposed under Rules 9(2), 52(A), 173(Q), 226 and 209(A) of Central Excise Rules, 1944 and Section 11AC without any justifiable or legal reason whereas the penalties were imposed in accordance with law;

(2) Whether it was correct for the Tribunal to vacate the demand for interest made in terms of valid, mandatory and explicit legal provisions contained in Section 11AB; and

(3) Whether Tribunal could pass an order without examining the issues involved, following the ratio of a case involving dissimilar facts, which has also been appealed against before Supreme Court.

3. We may first refer to the third question. According to the petitioner, the Tribunal could not have relied on its earlier decision in 2003 (161) ELT 285 as the appeal filed by the Department against the said decision was pending before the Supreme Court.

4. When the matter came up today, learned counsel for the respondent submitted that appeal filed by the Department before the Supreme Court in Civil Appeal No. D5977/2003 [2004 (163) E.L.T. 53 (S.C)] was dismissed by the Supreme Court on 7-5-2003. He therefore rightly submitted that third question would not arise for consideration.

5. In so far as questions 1 & 2 are concerned, questions are framed on the assumption that the Tribunal has granted relief without any justifiable reason. We find that Tribunal has in fact given a reason i.e., the disputed duty has been paid by the party even before the issue of show cause notice and this would show that there was no question of any fraud, misrepresentation or suppression of facts. In fact, the Tribunal in Rashtriya Ispat Nigam Ltd.'s case, held that where assessee deposits the duty even prior to the issue of a show cause notice, penalty should not be imposed and interest should not be levied. The Supreme Court has rejected the appeal filed against the said order. Therefore we find that order of the Tribunal is a reasoned order though brief and no question of law arises in regard to the said order. Petition is therefore dismissed.