(2024) 12 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : CEA No. 7 of 2020

Commissioner of Central GST and Central Excise, Jammu and Kashmir Jammu @APPELLANT @ Hash Narbada Industries

Date of Decision : 31-12-2024

Acts Referred:

Central Excise Act, 1944 — Section 14, 35G
Indian Penal Code (45 of 1860) — Section 193, 228

Citation : (2024) 12 J&K CK 0001

Hon'ble Judges : Sanjeev Kumar J, Puneet Gupta, J

Bench : Division Bench

Advocate : Rohan Nanda, Sudhir Malhotra, Snigdha Shekhar

Final Decision : Dismissed

Judgement

JUDGMENTTAG-JUDGMENT

Sanjeev Kumar J

1. This appeal under Section 35G of the Central Excise Act, 1944 [â??the Act?] is directed against the final order dated 28.08.2018 passed in

Appeal No.E/60004/2018 whereby the Customs, Excise & Service TaxA ppellate Tribunal [â??CESTAT?], Chandigarh has set aside the order

of the Central Excise Commissioner, Chandigarh II, dated 05/06.05.2016.

2. Vide order dated 27.01.2020, this appeal was admitted for hearing on the following substantial questions of law:

(i) Whether the Tribunal can ignore inquiry/investigations conducted and statements recorded under Section 14 of the Central Excise Act,

1944 read with Section 193 and Section 228 of the Indian Penal Code (45 of 1860) ?

(ii) Whether the Tribunal is correct in allowing the appeal of the respondent with consequential relief where so called supplier of crude

Menthol oil were found non-existence/fake during investigation?

(iii) Whether the Tribunal is correct in allowing the appeal of the respondent with consequential relief, by holding the demand on account of

assumption and presumption is not sustainable, without going into the facts of the case, emerged during investigation, searches of premises

of concerned and follow up investigation of the case ?

(iv) Whether the Tribunal is correct in allowing the relief when the party had indulged into fraud, wilfully suppressed/mis-declared the

material facts and also resorted to issue invoice without manufacturing and passing the CENVAT Credit to downstream.

(v) Whether the impugned order passed by the Tribunal is justified in accordance with the provisions of notification No. 56/2002-CE dated

14.11.2002 ?

3. Before we advert to the arguments advanced by the learned counsel appearing on both sides and proceed to determine the substantial questions of

law framed by this Court, we deem it appropriate to allude to the factual antecedents leading to the filing of this appeal by the Revenue.

4. The respondent, having Central Excise Registration No. AABC6468GXMQQ3, was engaged in the manufacture oâf? ?Menthol Flakesâ??. It was

entitled to and was availing the benefit of area based exemptions in terms of Notification No.56/2002-CE dated 14.11.2002 as amended. The

respondent, during the relevant period i.e from Nov 2007 to March 2010, procured raw material i.e crude mentha oil against invoices from various

suppliers, mostly based in the State of U.P. Since the respondent had paid the excise duty on the manufactured goods removed from its unit by

utilization of CENVAT Credit/PLA, as such, in terms of Notification dated 14.11.2002 (supra), it availed the refund/self-credit of Central Excise Duty

paid through PLA amounting to Rs.23,61,38,350 under self credit option.

5. While the respondent was enjoying the benefits of area based exemptions under the Notification dated 14.11.2002 (supra), the appellant received

some intelligence inputs that the respondent was mis-utilising the exemption scheme in order to avail refund of the Central Excise Duty. The

investigation was undertaken by the Commissionerate, Central Excise Meerut-II [â??Commissionerate?] in which it came to be established that

the respondent had actually not manufactured goods, but had fraudulently shown production and clearance thereof with an intent to avail illegal

monetary benefits at the cost of the Government exchequer. The investigation concluded that the respondent had adopted a modus operandi of

showing production and clearance of excisable goods without actually manufacturing the same and, thus, misused the provisions of Exemption

Notification dated 14.11.2002 (supra).

6. The investigation by the Commissionerate revealed that during the relevant period, the respondent had procured the raw material from M/S Sachin

and Nitin Enterprises, Lucknow, M/S Neeraj Traders, Lucknow and M/S Rapti Commission Agency, Lucknow. The investigation by the

Commissionerate focussed on verifying the farmers who had allegedly supplied goods to certain suppliers of the respondent. Based upon the

investigation, the Commissionerate issued show cause notices to the buyers and manufacturers falling within its jurisdiction. A specific inquiry in

respect of M/S Sachin and Nitin Enterprises, Lucknow was also conducted.

The summons issued to M/S Sachin and Nitin Enterprises, Lucknow were not complied with. The officers of the Commissinerate, Central Excise

Meerut-II searched various branches of M/S Sachin and Nitin Enterprises located at different places of District Barabanki in U.P. Some of the

premises were found closed and locked. The Head office of M/S Sachin and Nitin Enterprises, situate at Indira Nagar, Lucknow too was searched on

26.08.2009 in which 45 books containing 100 vouchers each, showing different payments made to the farmers for the purchase of crude menthe oil,

for the year 2007-08, were recovered. The farmers, who were named in the vouchers, and had allegedly supplied the crude mentha oil to M/S Sachin

and Nitin Enterprises, were verified through jurisdictional officers of the Central Excise. The farmers randomly selected from the purchase vouchers

were found non-existent. It is on the basis of this investigation conducted by the Commissionerate, the jurisdictional Commissioner concluded that the

J&K based units were not purchasing raw materials, so there was no question of manufacture of finished goods as had been shown by the respondent

to avail the area-based exemptions. The jurisdictional Authority, thus, initiated the proceedings by issuing a show cause notice to the respondent,

raising a demand for the duty refunded in terms of Notification dated 14.11.2002 (supra).

7. The Adjudicating Authority confirmed the demand on the ground that the farmers who had allegedly supplied the raw material i.e, mentha oil were,

non- existent and that, in the absence of any supply of raw material, there was no manufacturing process undertaken by the respondent. Therefore, by

way of order impugned before the CESTAT, the excise duty refunded to the respondent was sought to be demanded. Against the order of

Adjudicating Authority, an appeal was preferred before CESTAT, Chandigarh which has been accepted by the CESTAT and the impugned order

passed by the Adjudicating Authority has been set aside.

8. The impugned order of CESTAT has been challenged by the appellant primarily on the ground that the CESTAT erroneously ignored the

Inquiry/investigation conducted by the Commissionerate and also that the impugned order passed by the CESTAT is not in conformity with the

provisions of Notification dated 14.11.2002 (supra). On facts, it was argued by Mr. Nanda, learned counsel for the appellant that once it was firmly

established that the origin of the raw material used by the respondent in its alleged manufacturing process was fabricated, the jurisdictional Authority

had no option, but to hold the entire transaction, starting from the procurement of raw material to the manufacturing of finished products and their

removal from the unit, was fake and manipulated to claim the benefit of area-based exemptions under the Excise Notification dated 14.11.2002

(supra).

9. Per contra, Mr. Sudhir Malhotra learned counsel appearing for the respondent, would argue that the entire case of the appellant against the

respondent is based upon the investigation conducted by the Commissionerate from the farmers who allegedly supplied the crude mentha oil to some

of the suppliers of the respondent. He would argue that the suppliers of the respondent were traders and that the respondent did not procure any

goods directly from the farmers. He submits that the entire case of the Revenue is that the respondent had neither procured crude mentha oil, nor

produced excisable goods during the relevant period, and that the respondent wilfully fabricated the records in respect of raw material procurement,

production, and clearance. Mr. Malhotra would argue that, in the absence of any independent investigation conducted by the jurisdictional Central

Excise Authorities into the functioning of the respondent, the jurisdictional

Authority could not have raised the demand for refund of excise duty paid by the respondent on the clearance of goods from its unit. He submits that, in response to the show cause notice, the respondent had submitted its reply clarifying its position, as is reproduced in paragraphs No. 5, 6 and 7 of the impugned order passed by the CESTAT. However, the same was neither referred to by the Adjudicating Authority, nor controverted by the Revenue department. He, therefore, submits that the CESTAT correctly appreciated the issue and came to the conclusion that there was no evidence on record proving that the respondent was not the manufacturer and had not produced the excisable goods during the relevant period. Consequently, the CESTAT held that there was no illegality or fraud committed by the respondent in availing the refund of excise duty paid by it on the removal of goods manufactured in its unit.

10. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the CESTAT has very correctly appreciated the entire controversy and has rightly concluded that the action of the appellant, based solely on the investigation conducted by the Commissionerate, was not sustainable in law.

11. With a view to deny the benefit of the exemptions envisaged under Excise Notification dated 14.11.2002(supra), the appellant was required to demonstrate and prove that during the relevant period, when the refund was claimed by the respondent, it had not procured any raw material, nor had it undertaken any manufacturing process. This could have been determined by the appellant by conducting an inquiry/investigation specifically focused on these aspects of the matter.

12. Indisputably, in the inquiry conducted by the Commissionerate, the respondent was not associated. The clear case of the respondent is that it procured raw material for its unit i.e, crude menthe oil, from various suppliers in Lukcnow and, therefore, it was not for the respondent to further find out and inquire as to how and from whom the suppliers had procured the raw material. The Commissionerate has undoubtedly conducted an elaborate inquiry, but could only conclude that the farmers, whose names were appearing on the vouchers seized from the possession of M/S Sachin and Nitin Enterprises were non-existent. The Commissionerate has, thus, seriously doubted the procurement of raw material by the suppliers of the respondent.

That apart, the entire investigation conducted by the Commissionerate was at the back of the respondent and, therefore, could not have been made the

sole basis for action against the respondent. The respondent had produced several documents before the Adjudicating Authority to prove that it had

not only procured the raw materials, but had also manufactured finished goods from these materials, which were cleared from the unit upon payment

of excise duty. These documents included a certificate from the Commercial Tax Officer, Jammu dated 28.04.2006; a certificate from the General

Manager; District Industries Centre, Jammu dated 27.06.2006; permission for running the factory into three shifts throughout the year from the

Inspector of Factories and Boilers, Jammu dated 13.02.2008; permission for installation of additional machinery for enhancing its

capacity/manufacturing additional product, inter alia, on the condition that the unit will operate on DG sets; Annual financial statements; audited

financial statements for the relevant period and periodic returns submitted to Inspector of Factories. The CESTAT has rightly taken note of the fact

that most of the consignments of the raw material procured by the respondent were entered at the toll barrier. The officers of the District Industries

Centre, who had assessed and fixed the capacity of the respondent, had regularly verified the purchase consignments. The Adjudicating Authority has

also ignored the fact that the respondent had installed two DG sets of 125 KVA to supplement the power. The case was clearly set up by the

respondent before the Adjudicating Authority, but the same was not enquired into or investigated and the Adjudicating Authority rather placed sole

reliance upon the investigation conducted by the Commissionerate. The CESTAT has rightly not approved the manner in which the proceedings were

conducted by the Adjudicating Authority.

13. We, at the cost of repetition, would say that with a view to claim payment of refund availed by the respondent under Notification dated 14.11.2002

(supra), it is necessary for the jurisdictional Excise Authority to establish the following:

(i) That no raw material has been procured by the respondent;

(ii) That the unit has not undertaken any manufacturing activity involving the use of raw material during the relevant period;

(iii) That no excisable goods were removed by the respondent from the unit and that the refund was fraudulently claimed.

14. With a view to prove the aforesaid, an in-depth investigation is required to be conducted by the jurisdictional Authority by providing the respondent

with a fair opportunity to explain and put up its defence. The report of the Commissionerate may form the basis for suspecting malpractices indulged

in by the respondent but cannot be the sole basis for taking action. The investigation conducted by the Commissionerate could, at the most, be taken as

a prima facie material to initiate action against the respondent. However, any action, to be taken against the respondent, must satisfy the requirements

of law and, in particular, the compliance with the principles of natural justice.

15. In reply to the show cause notice issued by the jurisdictional Authority, the respondent had brought on record some evidences clearly

demonstrating that not only the raw material stood procured, but the goods were also manufactured in the unit of the respondent from the procured

raw material. The raw material was transported in trucks from outside the State of Jammu and Kashmir into the State. The jurisdictional officers of

the Central Excise, the State Industries Department, and other statutory authorities had inspected the premises of the respondent from time to time

and had never reported that the respondent?s unit was defunct and was not engaged in the permitted manufacturing activity. All these evidences

could not have been ignored by the jurisdictional Authority only on the ground that there was investigation report from the Commissionerate belying the

claim of suppliers of the respondent that they had procured the crude mentha oil from different farmers in Barabanki District of U.P.

16. For the aforesaid reasons, we fully concur with the view taken by the CESTAT. The substantial questions of law raised by the appellant, and

framed by this Court vide order dated 27.01.2020, are essentially the disputed questions of fact and cannot even be termed as â??substantial

questions of lawâ??.

17. Viewed from any angle and for the reasons stated above, we do not find the order and judgment impugned passed by the CESTAT suffering from

any error or legal infirmity. The appeal is, thus, found to be without any merit and is, accordingly, dismissed. We, however, leave it open to the

Authority concerned to conduct a fresh investigation in the matter in consonance with the principles of natural justice and, of course, in accordance with law. The Authority may take appropriate action against the respondent if it is found to have indulged in any malpractices leading to a fraudulent

refund of excise duty paid allegedly on the excisable goods removed from its unit.

