(2008) 08 SC CK 0153

In the Supreme Court Of India

Case No : Civil Appeal No''s. 3301-3312 of 2003 and Criminal Appeal No. 109 of 2003

Commissioner of Customs and Central Excise, Hyderabad APPELLANT

Vs

Parsin Chemicals Ltd. and Others
Parsin Chemicals Ltd. and Another Vs Assistant Commissioner (Legal) and Another RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

Citation : (2008) 133 ECC 190 : (2008) 159 ECR 190 : (2008) 230 ELT 4

Hon'ble Judges : V. S. Sirpurkar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Kiran Bhardwaj, for B. Krishna Prasad, in CA 3301-3312/03 and V. Lakshmi Kumaran, Rana Mukherjee, for Sumita Mukherjee, in Criminal A. No. 109/0, for the Appellant; V. Lakshmi Kumaran, Rana Mukherjee and Alok Yadav for Goodwill Indeevar, for Respondent Nos. 1, 3, 4 and 6 in CA 3301-3312/03, Kiran Bhardwaj, for B. Krishna Prasad, for R1 in Crl. A. No. 109/03, for the Respondent

Final Decision : Allowed

Judgement

C.A. Nos. 3301-3312 of 2003

1. A show cause notice dated 05th April 1995 was issued to the assessee alleging, inter alia, that it has cleared certain goods without following the prescribed procedures and without payment of central excise duty. Thus, the assessee was asked to show cause as to why an amount of duty of Rs. 22,24,958.60 be not demanded. In addition, penalties were also sought to be imposed.

2. The Commissioner, vide order in original No. C.Ex.16/96 dated 11th March 1996 confirmed an amount of duty of Rs. 14,16,910/- as against Rs. 22,24,958.60 and imposed certain penalties.

3. The Customs, Excise and Gold (Control) Appellate Tribunal (for short, 'the

Tribunal') set aside the order of the Commissioner.

4. The revenue is in appeal against the said order. The point in issue in the present case is concluded in favour of the assessee and against the Revenue by a judgment of this Court in the case of M/S. Siv Industries Ltd. Vs. Commissioner of Central Excise and Customs, .

5. Revenue has also accepted the judgment in the said case pursuant whereto it has also issued clarifications vide Circular No. 618/9/2002-CX dated 13th February 2002 and has also amended the law.

6. At this stage, Mr. V. Lakshmi Kumaran, learned Counsel appearing for the assessee, states that the amount of duty, viz., Rs. 14,10,910/- as determined by the Commissioner of Customs & Central Excise, has already been deposited and irrespective of the result of these appeals he would not claim the same.

7. In view of the fair concession made by the counsel for the assessee, we hold that the said amount of Rs. 14,16,910/- shall not be refunded to the assessee. However, the order of the Tribunal setting aside the amounts of penalty imposed on the assessee by the Commissioner is confirmed.

8. The appeals are allowed accordingly. No costs. Criminal Appeal No. 109 of 2003

9. Against the order of the Commissioner determining duty of Rs. 14,16,910/- and imposing penalties, respondent No. 1 filed a criminal complaint being O.R. No. 140/1997 (De novo O.R. No. 99/1994) before Special Judge for Economic Offences, Hyderabad.

10. The assessee filed a petition before the High Court of Andhra Pradesh seeking to quash the criminal proceedings.

11. By the impugned order dated 22nd November 2001, the High Court dismissed the petition filed by the assessee.

12. Hence, this appeal.

13. Since by our order in C.A.Nos.3301-3312/2003, the verdict of the Tribunal as regards setting aside the amounts of penalty has been confirmed, as a corollary, the criminal proceedings, arising out of the order of the Commissioner, initiated against the assessee stand quashed.

14. The appeal is allowed accordingly.