

(2015) 04 SC CK 0174

In the Supreme Court Of India

Case No : Civil Appeal Nos. 3043-3056 of 2004 and Civil Appeal No. 2642 of 2005

Kiran Ispat Udyog

APPELLANT

Vs

Commissioner of Central Excise

RESPONDENT

Date of Decision : 01-04-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A, 11C
Customs Tariff Rules, 1975 — Rule 56A

Citation : (2015) 321 ELT 182

Hon'ble Judges : A.K. Sikri, J; Rohinton Fali Nariman, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Before us, in these appeals, are 14 Appellants who have challenged the order of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter referred to as "CEGAT") [Associated Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 K.B. 223 whereby demand of duty as well as penalty imposed by the Commissioner is upheld. The question pertains to applicability of exemption Notification No. 208/83, dated 1-8-1983. It is not necessary to go into the details of the said notification inasmuch as learned Counsel for the Appellants submitted at the outset that he was accepting the position that the excise duty was payable on the goods manufactured. He, however, presses these appeals only on the ground of limitation arguing that the show cause notices issued to all the Appellants were beyond the period of six months and therefore, were time-barred. It is this aspect which needs to be determined in the present appeals. The periods which are involved for which the duty is demanded and the dates on which the show cause notices were issued to each of the Appellants are mentioned in tabulated form hereunder:

In view of the position disclosed above, it is not in dispute that all the show cause notices were issued beyond the period of six months. However, the

Respondents-Department invoked the provision of proviso to Section 11A of the Excise Act on the ground that there was mis-representation on the part of the Appellants and the action of the Appellants were not bona fide and therefore the extended period of limitation of five years would apply in these cases.

2. In order to appreciate the aforesaid stand taken by the Respondent, few facts relevant for determining the issue of limitation are recapitulated below:

3. The Appellants are engaged in manufacturing of rolled products, such as bars and rods of iron and non-alloy steel, round bars, C.T.D. bars, etc. This is done from two sources. The Appellants obtain re-rollable scraps/material from ship breaking and from the aforesaid material, activity of manufacturing of rolled products, etc. is carried out. The scraps/material is also obtained from other sources for carrying out the same manufacturing activity by the Appellants.

4. We are concerned here with the re-rollable scrap/material obtained from ship. Earlier, there was no excise duty on the aforesaid material and the exemption was provided by virtue of Notification No. 37/76 subject to fulfillment of certain conditions stated therein. However, this Notification was replaced by another Notification No. 208/83-C.E., dated 1-8-1983. Under this Notification, in order to avail the exemption, the conditions which were sought to be satisfied are mentioned in the proviso to the said notification which are as under:

"Provided that such final products are made from any goods of the description specified in the corresponding entry in column (2) of the said Table (such goods being hereinafter referred to as "inputs") and falling under the said Item on which the duty of excise leviable under the said Act, or the additional duty leviable under the Customs Tariff Act, 1975 (51 of 1975), as the case may be, has already been paid:

Provided further that no credit of the duty paid on the inputs has been taken Under Rule 56A of the said rules.

Explanation--For the purposes of this notification, all stocks of inputs in the country, except such stocks as are clearly recognisable as being non-duty paid, shall be deemed to be inputs on which duty has already been paid."

5. The Department took the view that insofar as Appellants are concerned, they do not fulfill the two conditions stipulated in the aforesaid proviso and therefore, would be liable to pay the excise duty as they were not entitled to the exemption under the aforesaid Notification No. 208/83 because of the said reason. The Appellants on the other hand, maintained that they were fulfilling these conditions and therefore, the exemption should continue.

6. In the year 1983, after the issuance of the said Notification, the Respondent-authorities had instructed the Appellants to take license under the Excise Act. The Appellants did not obtain the said license as in their opinion they were still covered by the Notification and entitled to exemption.

7. We may mention at this stage that the issue as to whether the inputs used to manufacture final products are "re-rollable scrap" and hence would be classified as "waste and scrap" under Item No. 25(3) prior to 1986 and chapter Heading 72.03 after 1986, wherein Headings are not mentioned, was the subject matter of litigation. Certain circulars were issued by the Department in this behalf. There were conflicting judgments of the CEGAT. Matter was ultimately referred to the larger Bench. The Larger Bench in the case of Associated Provincial Picture Houses Limited v. Wednesbury Corporation, (1948) 1 K.B. 223 decided the aforesaid issue in favour of the Assessee. It was also followed thereafter by the CEGAT in "L.G. Industries v. Commissioner of Central Excise, Rajkot" 2002 (148) E.L.T. 43. The other issue, namely, inputs purchased from open market for ship breakers are identifiable as "not duty paid" or not, was also subject matter of various litigations. This Court in the case of Collector of Central Excise, Patna Vs. Usha Martin Industries, etc., AIR 1997 SC 3871 : (2002) 84 ECC 795 : (1997) 72 ECR 257 : (1997) 94 ELT 460 : (1997) 7 JT 557 : (1997) 5 SCALE 600 : (1997) 7 SCC 47 : (1997) 3 SCR 601 Supp : (1998) 111 STC 254 : (1997) AIRSCW 3795 : (1997) 8 Supreme 19 had taken the view favourable to the Assessee. Therefore, till that time, the position as per these pronouncements was that the Appellants were fulfilling these conditions contained in the Notification No. 208/83. However, in M/s. Motiram Tolaram and Another Vs. The Union of India and Another, AIR 1999 SC 3121 : (1999) 66 ECC 61 : (1999) ECR 48 : (1999) 112 ELT 749 : (1999) 6 JT 48 : (1999) 4 SCALE 666 : (1999) 6 SCC 375 : (1999) 1 SCR 82 Supp : (1999) AIRSCW 3070 : (1999) 7 Supreme 235 , this Court expressed doubts about the correctness of the view taken in Usha Martin Industries's case and referred the matter to Larger Bench. Ultimately, the Constitution Bench in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, AIR 2002 SC 453 : (2001) 79 ECC 1 : (2002) 139 ELT 3 : (2002) 254 ITR 554 : (2001) 10 JT 456 : (2001) 8 SCALE 479 : (2002) 2 SCC 127 : (2002) 126 STC 122 : (2001) AIRSCW 5073 : (2001) 8 Supreme 624 overruled the Usha Martin Industries's case. This pronouncement came only in the year 2002.

8. It would be clear from the aforesaid judicial journey that the issues involved in the present case remained entangled in judicial battle for quite some time and only in the year 2002, the hazy picture was clarified. In such a scenario, if the Appellants took the decision that they were fulfilling the conditions mentioned in the Notification No. 208/83 and had not taken the licence under the Act, it cannot be stated that the aforesaid steps taken by the Appellants were not bona fide. It is more so when the judicial opinion prevailing at that time was in favour of these persons.

9. The impugned judgment of the CEGAT shows that the two member Bench took the conflicting the view on the issue of limitation. One Member who took into consideration the aforesaid facts, decided that extended period of limitation would not be applicable and the notice was time-barred and the other Member was of the view that the action of the Appellants was not bona fide as they failed to obtain the licence. The matter was referred to the third Member who concur

with the view of the Technical Member holding that extended period of limitation would be applicable.

10. From the narration of events noted above, it is clear that the only reason because of which the majority has held against the Appellants is that the inaction on their part not to take the licence was not bona fide. We do not agree with the same. When the authorities ask the Appellants to take licence in the year 1983 itself and the Respondents did not comply, nothing prevented the authorities to take action against the Respondents immediately, rather than waiting for number of years before issuing the show cause notice. We find that the minority view taken by the judicial Member was correct who while taking this view observed as under:

"As regards the plea that the demands are barred by time, we see no force in the Appellant's plea on this point. We notice that the Appellants had obtained licence but the same was delicensed subsequently. There was a dispute with regard to exemption of these materials and the matter had been pending for issue of Notification Under Section 11C of the Central Excises and Salt Act, 1944. The department had recorded statements from Appellants as far back as 14-12-86 and show cause notice was issued only on 31-10-88. There is no finding recorded by the Collector regarding factors leading to willful suppression and intention to evade duty. The Appellants have submitted that they were holding a bona fide belief and with regard to non-dutiability of the item as the issues had been contested and that all the facts were with the knowledge of the department. The same requires acceptance in the facts and circumstances of the case. We, therefore, do not see any reason to hold that the department was justified in invoking larger period in this case. Admittedly, in all the appeals show cause notices has been issued after a period of 6 months and therefore, we have to hold that these demands are barred by time. The Appellants succeed on time bar only and as a consequence the impugned orders are required to be set aside and the appeals are required to be accepted."

As we concur with the aforesaid view, these appeals are allowed holding that the show cause notices were time-barred and extended period of limitation was not available to the Respondents herein. There shall however, be no orders as to costs.