(2015) 05 UK CK 0024

In the Uttarakhand High Court

Case No : Writ Petition No. 1998 of 2009 (M/S)

Kukreti Steels Limited APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 37, 3A, 3-A
Finance (No. 2) Act, 2009 — Section 111
Finance Act, 2001 — Section 121
General Clauses Act, 1897 — Section 6, 6(1)

Citation : (2015) 322 ELT 465

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : V.K. Kohli, Senior Advocate assisted by Rajni Supiyal, for the Appellant; Shobhit Saharia, Advocates for the Respondent

Judgement

Alok Singh, J—Present petition is filed assailing the order dated 06.08.2002, passed by Assistant Commissioner, Customs & Central Excise, Meerut whereby penalty of Rs. 17,50,484/- was imposed on the petitioner under proviso 3 (ii) of Rule 96ZO (3) of the Central Excise Rules, 1944 with reference to demands raised by two show cause notices dated 20.08.1998 and 07.04.1999. Petitioner is also seeking writ of mandamus commanding the respondents not to realize the penalty of Rs. 17,50,484/- from the petitioner pursuant to the impugned order dated 06.08.2002.

2. Brief facts of the present case, inter alia, are that petitioner is the manufacturer of M.S. Ingots and factory of the petitioner is situated at Kotdwar, District Pauri Garhwal. Undisputedly, petitioner did not pay the excise duty from 01.09.1997 to 15.01.1998 and, thereafter, from 05.07.1998 to March, 1999 amounting to Rs. 17,50,484/-, therefore, notices were issued to the petitioner on 20.08.1998 and 07.04.1999 calling the explanation from the petitioner as to why petitioner should not be asked to pay interest @ 18% p.a. on the excise duty due and as to why penalty to the tune of excise duty due should not be imposed

against the petitioner. Petitioner furnished his reply to the show cause notices and ultimately, vide impugned order dated 06.08.2002, penalty of Rs. 17,50,484/- was imposed against the petitioner (equivalent to the excise duty due) under proviso 3 (ii) of Rule 96ZO (3) of the Central Excise Rules, 1944. Feeling aggrieved, petitioner has preferred Statutory Appeal before the Commissioner (Appeals). Commissioner (Appeals), vide order dated 05.07.2004, was pleased to reduce the penalty from Rs. 17,50,484/- to Rs. 75,000/- only. Petitioner paid entire excise duty alongwith 18% interest and amount of penalty of Rs. 75,000/- as directed by the Commissioner (Appeals) vide order dated 05.07.2004. Thereafter, Revenue preferred appeal before the Customs, Excise and Service Tax Appellate Tribunal, New Delhi, however, same came to be dismissed by the Appellate Tribunal vide judgment dated 07.02.2005 upholding the judgment passed by the Commissioner (Appeals). Thereafter, Revenue preferred appeals before this Court, however, appeals so filed by the Revenue also came to be dismissed vide judgment dated 07.06.2007. Still feeling aggrieved, Revenue approached Hon''ble Apex Court in Civil Appeal No. 7016 of 2008. Hon''ble Apex Court, vide judgment and order dated 1st May, 2009, having placed reliance on the judgment of the Apex Court in the case of Union of India (UOI) and Others Vs. Dharamendra Textile Processors and Others, (2008) 219 CTR 617 : (2008) 133 ECC 247 : (2008) 159 ECR 247 : (2008) 231 ELT 3 : (2008) 306 ITR 277 : (2008) 11 JT 255 : (2008) 13 SCALE 233 : (2008) 13 SCC 369 : (2008) 174 TAXMAN 571 : (2009) 11 Vat Reporter 63 : (2008) 18 VST 180 , was pleased to allow the appeal filed by the Revenue. Meanwhile, Section 3A was omitted from the Central Excise Act, 1944 vide Section 121 of the Finance Act 14 of 2001 w.e.f. 11.05.2001. Moreover, vide notification No. 6 /2001-C.E.(N.T.) : , dated 1st March, 2001, known as Central Excise (Third Amendment) Rules, 2001, Rule 96ZO was also omitted. In view of the omission of Section 3A of the Act and Rule 96ZO of the Rules, petitioner once again approached the Apex Court by way of moving IA No. 2 in Civil Appeal No. 7016 of 2008 which came to be dismissed by the Hon''ble Apex Court vide order dated 1st May, 2009. Order dated 1st May, 2009, passed by the Hon''ble Apex Court reads as under :--

"In this case we are only concerned with the quantum of penalty and not with the imposition of penalty. In our view, therefore, Dharmendra Textile''s case squarely applies.

A new point is sought to be agitated before us relatable to imposition to penalty. It is open to the assessee to work out his rights, if so advised, in accordance with law.

I.A. No. 2 is dismissed."

3. Thereafter, petitioner has preferred present writ petition challenging the order dated 06.08.2002 and recovery of penalty pursuant thereto.

4. In view of the facts as discussed hereinbefore, it is clear on the record that

order dated 06.08.2002 impugned in the present writ petition was upheld by the Hon''ble Apex Court vide order dated 1st December, 2008, annexure No. 6 to the writ petition. Since, impugned order dated 06.08.2002, stood upheld/confirmed by the Apex Court, vide judgment dated 1st December, 2008, now, question arises as to whether same can be permitted to be assailed once again by way of present writ petition in view of the order passed by the Hon''ble Apex Court dated 1st May, 2009.

5. Perusal of order dated 1st May, 2009 would reveal that Hon''ble Apex Court has not given any liberty to the petitioner to assail order dated 06.08.2002 once again. The only observation made by the Hon''ble Apex Court was that it was open to the assessee to work out his rights, if so advised, in accordance with law. In my considered opinion, since order dated 06.08.2002 stood confirmed/upheld by the Hon''ble Apex Court, present petition challenging the same very order and recovery pursuant thereto, is not maintainable and is hit by principle of res judicata.

6. Moreover, when show cause notices were issued to the petitioner on 20.08.1998 and 07.04.1999, calling the petitioner as to why penalty should not be imposed to the tune of the excise duty due, Section 3A and Rule 96ZO were in existence and have not been omitted. Section 111 of the Finance (No.2) Act, 2009 reads as under :--

"111. Amendment of notifications issued under Section 37 of Central Excise Act and validation of certain actions taken. - (1) The notifications of the Government of India, in the Ministry of Finance (Department of Revenue) Numbers G.S.R. 448 (E), dated the 1st August, 1997, G.S.R. 503 (E) dated the 30th August, 1997 and G.S.R. 130 (E), dated the 10th March, 1998, issued under Section 37 of the Central Excise Act, shall stand amended and shall be deemed to have been amended retrospectively in the manner as specified against each of them in column (3) of the Fourth Schedule, on and from the corresponding date mentioned in column (4) of that Schedule and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, any action taken or anything done or purported to have been taken or done under the said notifications, shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the notifications as amended by this sub-section had been in force at all material times.

(2) Notwithstanding the omission of Section 3-A of the Central Excise Act by Section 121 of the Finance Act, 2001 (14 of 2001) and the expiration of the notifications referred to in sub-section (1), for the purposes of sub-section (1), the Central Government shall have and shall be deemed to have the power to make rules and issue or amend notifications under Section 3-A read with Section 37 of the Central Excise Act, retrospectively at all material times.

(3) Any action taken or anything done or omitted to be done or purported to

have been taken or done or omitted to be done under the notifications referred to in sub-section (1) at any time during the period commencing on or from the 1st day of August, 1997 and ending with the day, the Finance (No.2) Bill, 2009 receives the assent of the President, shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done or omitted to be done as if the amendments made by sub-section (1) had been in force at all material times and accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, -

(a) any action taken or anything done or omitted to be done, during the said period in respect of any goods under the said notifications, shall be deemed to be and shall be deemed always to have been, as validly taken or done or omitted to be done as if the amendments made by sub-section (1) had been in force at all material times;

(b) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for any action taken or anything done or omitted to be done, in respect of any goods under the said notifications, and no enforcement shall be made by any court, of any decree or order relating to such action taken or anything done or 0mitted to be done as if the amendments made by sub-section (1) had been in force at all material times.

(c) recovery shall be made of such amounts of duty or interest or penalty or find or other charges which have not been collected or, as the case may be, which have been refunded, as if the amendments made by sub-section (1) had been in force at all material times.

Explanation. - For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."

7. There is no dispute that Rule 96ZO was introduced/enacted vide Notification No. G.S.R. 448 (E) : , dated 1st August, 1997. Perusal of sub-section (3) of Section 111 of the Finance (No.2) Act, 2009 would reveal that any action taken or anything done or purported to have been taken or done at any time during the period of commencement on or from 1st August, 1997 and ending with the day the Finance (No.2) Bill, 2009 receives the assent of the President shall be deemed to be, and to have always been, for all purposes, as validly and effectively taken or done as if the amendments made by sub-section (1) had been in force at all material times and notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority.

8. Constitution Bench of Hon''ble Apex Court in the case of Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, AIR 2000 SC 811 : (2000) 68 ECC 1 : (2000) 119 ELT 257 : (2000) 1 JT 453 : (2000) 1 SCALE 369 : (2000) 2 SCC 536 : (2000) 1 SCR 518 : (2000) AIRSCW 364 : (2001) AIRSCW 2399 : (2000) 1 Supreme 412 has held as under:--

"The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision."

9. As per the dictum of the Apex Court in the case of Kolhapur Canesugar Works Ltd. (Supra), the normal effect of repealing a statute or deleting a provision would mean as if same statute has never been passed and such repealed or omitted statute shall be considered as a law which never existed and the effect and omission of repealing of such statute without saving clause in favour of the pending procedure, all action must stop where the omission finds them and if final relief has not been granted, shall not be granted, however, savings of the nature contained in Section 6 of General Clause Act or Special Act may modify the position. Therefore, operation of repeal or deletion as to the future and the past largely depends on the savings applicable.

10. In the present case, by way of Section 111 of the Finance (No.2) Act, 2009, any action done or purported to be done pursuant to the notification dated 1st August, 1997, i.e. enactment of Rule 96ZO of the Central Excise Rules, 1944 were saved and held to be valid. Therefore, imposition of penalty against the petitioner by the order dated 06.08.2002 as confirmed/upheld by the Apex Court is valid and does not require any interference.

11. Consequently, writ petition fails and is hereby dismissed.

12. No order as to cost.

