

(2008) 09 SC CK 0107

In the Supreme Court Of India

Case No : Civil Appeal No's. 4355, 4358, 4381 and 4499 of 2002

Mittal Pipes Manufacturing Co.

APPELLANT

Vs

Commissioner of Central Excise, New Delhi

RESPONDENT

Date of Decision : 23-09-2008

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2008) 134 ECC 100 : (2008) 160 ECR 100

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

Bench : Division Bench

Advocate : Amita Gupta, Rupesh Kumar and Neelam Sharma, for the Appellant;
K. Radhakrishnan Sanjeev K. Bhardwaj, Shweta Garg, H.K. Naik for P.
Parmeswaran, for the Respondent

Final Decision : Dismissed

Judgement

1. This order shall dispose of the aforesaid Civil Appeals as they have been filed by the company or its partners and the points involve are the same. For the sake of brevity, facts are taken from Civil Appeal No.4355 of 2002.

Facts:

2. Appellant received supply order from 203 Engineer Regiment vide supply order dated 23.4.1988 for supply of 8 pre-fabricated steel helicopter hangars of the size of 18 mts. x 16.5 mts. suitable to accommodate two 'Cheetah' Helicopters. Similarly, as per supply order dated 1.8.1987, they received order for supply of 50 pre-fabricated tubular shelters with outside cladding including roofing as per specification, detailed in that order itself. They classified these products as "steel structures" under Chapter Heading 73.08.

3. A show cause notice dated 05th May, 1990 by invoking the extended period of limitation u/s 11A of the Act was issued to the appellant alleging that they are evading excise duty on pre-fabricated shelters by mis-declaring their product as "steel structures" falling under Sub-heading 7308.90 instead of pre-fabricated

buildings falling under Sub-heading 94.06 of the Central Excise Tariff Act and also by under valuation of the same. A demand of Rs. 47,78,107.71 for the period 1985- 86 to 198801989 was raised against the appellant and penalty was also proposed against all the partners. Mr. D.K. Mittal, partner of the company was asked to produce the documents relevant to the enquiry by issuing summons u/s 14 of Central Excise & Salt Act, 1944 (for short, 'the Act') by the Senior Intelligence Officer. It was noticed from the purchase orders received from the defence authorities that the orders were for supply of complete pre-fabricated buildings and not for steel structures. Mr. D.K. Mittal, partner of the Company in his statement, recorded during the investigation, admitted that the orders received by the company were for supply of complete pre-fabricated buildings and supply was made accordingly.

4. Collector of Central Excise, Delhi vide his order dated 31.3.1992 confirmed the demand against the appellant and penalty of Rs. 2,00,000/- was imposed upon it. Appellant filed appeal before the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi (for short, 'the Tribunal'). The main ground taken in the appeal was that Collector did not give an opportunity to the appellant to either cross-examine or to make its submissions. Tribunal vide its order dated 22.12.1992 remanded the matter to the Collector with a direction to adjudicate the show cause notice after affording the opportunity of cross-examine and the submissions made.

5. Thereafter, appellant filed its written submissions before the Collector of Central Excise, New Delhi.

6. Collector again vide his order-in-original dated 20.5.1994 confirmed the demand of Rs. 47,78,107.71 and imposed penalty of Rs. 10,00,000/- on the appellant. Penalty of Rs. 1,00,000/- was also imposed on all the partners.

7. Being aggrieved, company and its partners filed appeals before the Tribunal. Tribunal by its impugned common order has confirmed the demand duty but reduced the penalty of Rs. 10,00,000/- imposed on the company to Rs. 2,00,000/- on the ground that before remand penalty imposed was Rs. 2,00,000/-. However, penalty of Rs. 1,00,000/- imposed on all the partners was maintained. Tribunal in its impugned order has recorded a finding that the appellant received orders from the defence authorities for complete pre-fabricated buildings classifiable under Sub- heading 94.06 and the supply was made accordingly. That Mr. D.K. Mittal, partner of the company in his statement had admitted that the firm received the orders from the defence authorities for complete pre- fabricated buildings. This finding is a finding of fact which does not call for any interference. Tribunal has also recorded a finding that there was no violation of principles of natural justice and adequate opportunity had been provided to the appellant. Mistake committed by the authorities below was rectified by the Tribunal by remanding the matter to provide the opportunity to the appellant which was denied to it. The third point which had been decided against the appellant is regarding limitation. We agree with the view taken by the

Tribunal that there was suppression of material facts by the appellant and the revenue was right in invoking the extended period of limitation u/s 11A of the Central Excise Act, 1944.

8. The appeals are accordingly dismissed. Parties shall bear their own costs.