
(2016) 09 MAD CK 0075

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1464 of 2006 (Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944, against the Final Order No. 1263 of 2005 and 1264 of 2005 dated 12.09.2005 passed by the Customs, Excise and Service Tax Appellate)

The Commissioner of Central Excise, Chennai II Commissionerate, No.692, MHU Complex, Anna Salai, Nandanam, Chennai - 600 035 - Appellant @HASH M/s. Southern Polymers Industrial Corporation 5/1, S.P. Koil Street, Vadapalani, Chennai - 600 026

Date of Decision : 22-09-2016

Acts Referred:

Central Excise Rules, 1944 — Rule 173Q, Rule 209A
Central Excises and Salt Act, 1944 — Section 11AB, Section 11AC

Citation : (2016) 8 MLJ 246

Hon'ble Judges : Nooty. Ramamohana Rao and Dr. P. Devadass, JJ.

Bench : Division Bench

Advocate : Mr. A.P. Srinivas, Standing Counsel, for the Appellant; Mr. Jayachandren, Advocate, for the Respondents

Final Decision : Dismissed

Judgement

Nooty. Ramamohana Rao, J. - This Civil Miscellaneous Appeal is preferred under Section 35G of the Central Excise Act, 1944, against the orders of the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai, rendered in Final Order No. 1263 of 2005 and 1264 of 2005 dated 12.09.2005.

2. This Civil Miscellaneous Appeal was admitted by a Division Bench of this Court on 28.04.2006 to consider the following substantial questions of law:-

"(i) Whether the Tribunal has acted upon law by passing order of remand to the adjudicating authority when the point of dispute raised before them has already been elaborately reasoned out?

(ii) Whether the order of the Tribunal is merely accepting the pleas of the 1st respondent without recording any reason and just citing the decision of the Tribunal, when the adjudicating authority has given effect to it with adequate

reasons, is acceptable under law?

(iii) Whether the penalty amount reduced by the Tribunal without recording any reason is correct in law?

(iv) Whether the personal penalty imposed on the 2nd respondent who has abetted the offence which was set aside by the 3rd respondent without reason is agreeable, in view of the existing penal provisions under the law?"

3. Heard Mr. A.P. Srinivas, learned Standing Counsel for the Department as well as Mr. Jayachandren, learned counsel for the Respondent/Manufacturer.

4. The controversy in this appeal lies in a very narrow campus. The first Respondent being the manufacturer of Excisable goods, has been proceeded against and the adjudicating authority has raised a demand of Rs.22,19,949/- from the Respondents, in terms of Rule 9(1) read with Section 11A of the Central Excise Act, 1944 (henceforth called the Act). The adjudicating authority has also imposed an equal amount as penalty under Section 11AC of the Act read with Rule 173Q of the Central Excise Rules, 1944 (henceforth called the Rules). Interest under Section 11AB of the Act was also demanded. The adjudicating authority has imposed a penalty of Rs.1,00,000/- on the Respondents under Rule 173Q of the Rules. One Shri N. Ramachandran has also been imposed a penalty of Rs.2,00,000/- under Rule 209A of the Rules. That Order-in-Original dated 16.03.2000 passed by the Commissioner of Central Excise, Chennai II Commissionerate, was challenged before the Tribunal referred to supra.

5. It is not in dispute that the relevant provisions under Section 11AC was not available on the statute book when the alleged failure to pay the Duty at the time of the clearance of the goods manufactured. Therefore, the Tribunal has rightly set aside that part of the Order-in-Original passed by the Adjudicating Authority.

6. Since the Respondents have not disputed the liability to pay Duty, there was no necessity for the Tribunal to examine the correctness of the adjudication in that regard. But, however, dealing with the penalty of Rs.2,00,000/- imposed under Rule 209A of the Rules, since there was no evidence brought forth to link Shri N. Ramachandran, for the alleged violations, the penalty is set aside by the Tribunal.

7. It will be relevant to notice that Rule 209A of the Rules, has specifically required that any person, who deals with any Excisable goods which he knows or has reason to believe are liable to confiscation under the Act or Rules made thereunder, shall be liable to a penalty not exceeding three times the value of such goods or Rs.5,000/- whichever is greater, if he is in any way concerned in transporting, removing or depositing, keeping, concealing, selling or purchasing or in any other manner deals with such goods. Therefore, it is essential that there must be evidence brought on record linking the role of the individual to any of these offending acts in which event alone the penalty contemplated by Rule

209A of the Rules, can be imposed. Since there was no material to link Shri N. Ramachandran, with any such acts enumerated under Rule 209A of the Rules, the penalty imposed against him under Rule 209A of the Rules, is liable to be set at naught and that was the reason why the Tribunal has rightly set aside that portion of the Order in Original passed by the adjudicating Authority.

8. Now, what remains is with regard to the levy of penalty of Rs.1,00,000/- imposed under Rule 173Q of the Rules.

9. Rule 173Q of the Rules deals with confiscation and imposition of penalties. Therein, it was spelt out that for any act of violation indulged in, where the goods are liable to confiscation by the persons involved in manufacture of such goods or registered person of a warehouse or a registered dealer, kept in a registered warehouse or registered dealer, shall be liable to a penalty not exceeding three times of the value of the Excisable goods in respect of the contravention referred to in the said Rule or Rs.5,000/- whichever is greater. The Rule itself is framed in a language which brings out an element of exercise of discretion on the part of the Adjudicating Authority.

10. In the instant case, the discretion has not been exercised on sound lines and hence the Tribunal has reduced the penalty from Rs.1,00,000/- to that of Rs.50,000/-, though the Tribunal ought to have given the necessary reasons for it to substitute the quantum of penalty. But however, we cannot ignore the fact that the Order-in- Original does not speak of the liability of the goods for confiscation itself, at the first place. It is therefore, obvious that instead of remitting the matter to the Adjudicating Authority for consider afresh, even with regard to the penalty that is liable to be imposed under Rule 173Q of the Rules and furthermore with a view to shorten the litigation between the parties, the Tribunal has reduced the penalty from Rs. 1,00,000/- to Rs. 50,000/- and the Respondent/Manufacturer has not called in question that part of the order of the Tribunal and he has accepted it.

11. Therefore, we see no reason to interfere with the order passed by the Tribunal and hence, confirming the said order, we dismiss this appeal. No costs.