

HIGH COURT OF MEGHALAYA
AT SHILLONG

Central Excise Ap No. 1/2023 with
Central Excise Ap No. 2/2023
Central Excise Ap No. 3/2023
MC (Central Excise Ap) No.2/2023

Date of order: 12.07.2023

Pawan Kumar Sharma	vs.	The Commissioner, Central Goods and Services Tax and Central Excise
Shiw Bhagwan Sharma	vs.	The Commissioner, Central Goods and Services Tax and Central Excise
Vansha Enterprises LLP	vs.	The Commissioner, Central Goods and Services Tax and Central Excise
The Commissioner, Central Goods and Services Tax and Central Excise	vs.	M/s Vansha Enterprises LLP

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. Y. Aldak, Adv. (VC) with
Mr. K. Kapoor, Adv.

For the Respondent : Dr. N. Mozika, DSG with
Ms. K. Gurung, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

This is the second round of proceedings, so to say, and the assessee is in appeal upon duty, interest and penalty being levied on the assessee for non-payment or short payment of duty for a period more than one year prior to the date of issuance of the show-cause notice.

2. At the relevant point of time, Section 11A of the Central Excise Act, 1944 provided for a period of limitation of one year. However, the period of limitation would not apply if the short-levy or non-payment or the like was as a result of any fraud or collusion or any wilful misstatement or suppression of facts or contravention of any of the provisions of the Act or the rules made thereunder with intent to evade payment of duty. It is evident that for the Department to issue a show-cause notice, at the relevant point of time, for short payment or non-payment of duty and the like for a period beyond a year from the date of issuance of the notice, the element of *mens rea* on the part of assessee had to be established.

3. The key words in the relevant expression in Section 11A are “with intent to evade payment of duty”. Fraud, collusion, misstatement and suppression are different species of the same genus where the overarching conduct is the intent to evade payment of duty.

4. The show-cause notice dated April 7, 2008 pertained to a period beginning March, 2003 when the assessee began its production of soya nuggets in the State. However, prior to the issuance of such notice, the duty that was payable from 2006 onwards was tendered and there is no dispute in such regard. The matter came to be considered as to whether the assessee was liable for the period prior to 2006 and the order-in-original dated March 16, 2009 found the assessee and its officers liable.

5. Upon the matter being challenged in several fora and reaching this Court, an order was passed on February 8, 2022 indicating that there was several issues which ought to be considered or revisited by the Customs, Excise and Service Tax Appellate Tribunal. The three aspects that were highlighted in this Court's order have been noticed and set out in the order impugned dated August 25, 2022:

“(i) Whether in facts and circumstances of the case the benefit of exemption Notification No 8/2002-CE and 8/2003-CE (as amended from time to time), will be admissible to the appellant 1 during the period 2002-03 and 2003-04.

(ii) Since the SSI Exemption is granted for the turnover upto the value of Rs.1 crore, the time when the appellant crossed this turnover limit of one crore needs to be ascertained.

(iii) Whether for the reason that the benefit of exemption under Notification No 32/1999-CE (as amended from time to time) will be admissible to the appellant 1, appellant can be said to have intention to evade payment of duty, to invoke extended period of limitation as per proviso to Section 11A(1) of the Central Excise Act, 1944.”

6. The assessee started its production in or about March, 2003 and claimed that it was liable to be refunded any excise duty that it paid by virtue of the situs of its manufacturing unit in the State. Further, the assessee claimed that up to the turnover of Rs.1 crore, there was no excise duty that the assessee was required to pay. In addition, it was the undisputed position that by a letter or certificate issued in the year 2006 by the Range Superintendent in the Excise Department in the State, the

assessee was informed that the assessee was not liable to pay central excise duty nor was it required to obtain central excise registration.

7. One of the principal arguments of the assessee in the previous round was that since the assessee was in a quandary as to whether it was liable to pay excise duty on the soya nuggets manufactured by it, it approached the Range Superintendent of the Department here and obtained an opinion to the effect that it was not liable either to pay excise duty or to obtain excise registration. The assessee contended, on the basis of such material, that there may not have been any intention on the part of the assessee to deceive or, in other words, to evade the payment of duty. The assessee asserted that since no case of fraud or collusion or wilful misstatement or wilful suppression had been made out or indicated in the original show-cause notice issued in the year 2008, the Department was not entitled to the extended period and had to confine its demand and claim to the period within limitation which, at the relevant time, was one year. The further issue that was canvassed by the appellant in course of the previous round was that there was no question of the assessee attempting to evade duty since the entire matter was revenue neutral to the assessee. Certain notifications were relied upon to contend that in view of the location of the manufacturing unit in Ri-Bhoi district in the State, the assessee would have been refunded the quantum of excise duty that it had paid.

8. An incidental issue also arose as to when the assessee may have exceeded Rs.1 crore in turnover since prior to such period, no excise duty could be levied on the goods manufactured by the assessee. Another issue that was noticed in the order passed by this Court was as to whether the goods were manufactured under a brand.

9. Upon noticing the several issues that had been raised in course of the previous appeal, but due consideration whereof may not have been adequately reflected in the order impugned at that stage, the matter was remanded to the Appellate Tribunal for its fresh consideration upon indicating the areas that required to be looked into in course of the remand. The order of this Court of February 8, 2022 has been copiously reproduced in the order impugned herein and the three major questions which were framed find place in such order.

10. Apropos the extended period of limitation under the proviso to Section 11A(1) of the Act, as it stood at the relevant point of time, the Appellate Tribunal noticed the certificate issued by the Range Superintendent on September 13, 2006 and expressed surprise as to how such clarification in respect of the dutiability of the product could be sought when it was subsequently accepted by the assessee that the product became dutiable from March 1, 2006 pursuant to notification No.3/2006-CE of such date. The Appellate Tribunal wondered as to

what purpose there may have been for the assessee to have approached the Range Superintendent to obtain the opinion or the certificate.

11. However, inasmuch as the letter issued by the assessee seeking clarification and the opinion of the Range Superintendent was not on record, the Department has applied, in consonance with the principle recognised in Order 41 Rule 27 of the Code of Civil Procedure, 1908, for further or additional evidence to be brought on record. The application was adjourned to be decided along with this main appeal, as is customary in such situations. The contents of the assessee's letter of September 4, 2006 are set out:

“Ref. Your C.No.I(30)5/Misc/Vansha/Byr-I/06/776 Dt. 30.08.06

Dear Sir,

With ref. to your above mentioned letter we would like to inform you that we manufacture Soya Nuggets (Chunks) in our factory, and for that we are seeking clarification on the matter of dutiability under Excise Tariff. So kindly issue a Certificate clearing our doubt.

However we do hereby undertake that in case of any further clarification over the Excise Tariff you or we find it falling under Central Excise and attracting duty, we would immediately deposit the duty amount as soon as it comes to our knowledge.

Hope you find our undertaking in order, so kindly do the needful.”

12. There is no doubt that in response to the above query, the Range Superintendent categorically indicated in his letter of September 13, 2006 that the manufactured product of the assessee did not attract any excise duty and, as such, it was not obligatory on the part of the

assessee to obtain any central excise registration. It does not appear that such certificate or the opinion of the Range Superintendent expressed therein was obtained by fraud or collusion or wilful misstatement or wilful suppression. The facts were clearly indicated in the assessee's letter of September 4, 2006 and nothing in such letter can be said to have deceived or attempted to deceive the relevant Range Superintendent.

13. There is no dispute that ignorance of law is not an excuse. When a person undertakes a commercial venture and commences a manufacturing process or the like, such person is obliged to know the formalities necessary for the purpose and the duty, tax or the like payable thereupon. However, when a person in the position of the assessee herein was confused – and the entries in the central excise scheme are virtually a trap – and such assessee approached the Department through its Range Superintendent to obtain a clarification, coupled with an undertaking that even if a different view was subsequently taken it would pay the entire duty or the shortfall, the approach of the assessee could not be said to be one which indicated an intention to evade payment of duty.

14. Without attributing any motives to the relevant Range Superintendent, it is evident that the assessee was lulled into believing that the assessee was not liable to pay excise duty on its manufactured

product. Further, it is not as if the assessee paid the excise duty due pursuant to the notification of March 1, 2006 in 2006 itself. It was only much later, in the year 2007, that it dawned on the assessee that notwithstanding the certificate issued by the Range Superintendent, pursuant to the notification of March 1, 2006, the assessee was liable to pay excise duty. Accordingly, the assessee deposited the total duty that was due from it from March 1, 2006 in the year 2007. It is possibly such action on the part of the assessee that triggered off the issuance of the show-cause notice in April, 2008.

15. While dealing with such aspect of the matter, the Appellate Tribunal discredited the assessee approaching the Range Superintendent for an opinion by recording that the assessee had paid the duty that was due upon the notification of March 1, 2006 being published. What the Appellate Tribunal failed to notice was that the duty for such period was paid at a much later date upon it dawning on the assessee at a later stage that the notification of March 1, 2006 obliged it to pay the excise duty. Accordingly, in view of the fact that the assessee had approached the Department or an officer in the Department for an opinion and acted in terms of the opinion rendered, it would rule out any act of deceit on the part of the assessee or conduct which could be construed to having an intent to evade payment of duty.

16. Once so much is seen, the proviso to Section 11A(1), as it then stood, would not be available to the Department and the rest of the arguments and findings on such arguments become redundant. However, there is a further leg on which the assessee's contention can stand.

17. The assessee has relied on notifications under which it claims exemption in the sense that it would have had to pay the duty and obtain the refund by virtue of the location of its manufacturing unit. The relevant notifications have been set out and discussed in detail by the Appellate Tribunal in the order impugned. However, no reason has been indicated as to why the assessee in this case could not have obtained the benefit under the relevant notifications.

18. Though at first blush it would appear that the order impugned gives sufficient reason as to why the notifications for exemption or refund would not apply to the assessee, but a closer inspection would reveal that no reasons have been proffered in such regard.

19. The relevant discussion is confined to a paragraph towards the bottom of the page 310 of the appeal papers (page 46 of the impugned order) before quoting copiously from a judgment reported at 2000 (119) ELT 718. The quotation from the judgment ends at page 312 of the appeal papers (page 48 of the order impugned). It is evident that in the reported case it was not the same notification but a comparable

notification that was discussed in the context of revenue neutrality. For the dictum in the reported judgment to be appreciated and applied in the context of the case in hand, there ought to have been a sentence or two expended. However, it is evident from the order impugned that immediately upon the end of the quotation, the Appellate Tribunal begins with the word “Thus...” The word “Thus” is an indication of a finding and would convey the sense that the reasoning precedes it. In this case, the “Thus” follows immediately after the quotation without relating the dictum in the reported case to the facts of the present case. At any rate, all that the Tribunal has said is that there were several conditions which had to be complied with for the assessee to avail of the benefit under the relevant notifications. The Appellate Tribunal did not directly say that the assessee was ineligible, it only expressed the view that the Tribunal was not in a position to agree with the arguments advanced without indicating the specific grounds on which the assessee would be ineligible to obtain the benefit under the relevant notifications.

20. The discussion in the immediate preceding paragraphs is only to indicate the fallacious approach adopted by the Appellate Tribunal, though the consideration as to revenue neutrality and exemption under the relevant notifications become irrelevant upon it being noticed that the show-cause notice issued in the year 2008 could not have related to a period of more than one year prior to the date of its issuance since

there was no element of deceit or intention on the part of the assessee to evade duty nor had any case in such regard been made out.

21. Accordingly, the judgment and order impugned passed by the CESTAT on August 25, 2022 is set aside. Since the assessee has already made payment of the duty that it was liable to from March 1, 2006 onwards, there will be no further liability to the assessee on such account.

22. All the three matters arise out of the common order and one of the appeals deals with the assessee and the two others pertain to the officers of the assessee. Accordingly, Central Excise Appeal Nos.1, 2 and 3 of 2023 are allowed as indicated above.

23. MC (Central Excise Ap) No.2 of 2023 is disposed of.

24. There will, however, be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
12.07.2023
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