IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 145 OF 2014

M/s. Tigrania Metal and Steel Industries Pvt. Ltd.	}	**Appellant**
versus		
Commissioner of Central Excise	}	**Respondent**

Mr. Prakash Shah with Mr. Durgesh Nadkarni and Mr. Prasad Paranjape i/b. M/s. Legal Solutions for the Appellant.

None for the Respondents.

CORAM :- **S. C. DHARMADHIKARI & SUNIL P. DESHMUKH, JJ.**

DATED :- **FEBRUARY 27, 2015**

P.C. :-

This Appeal is by the Assessee. The Assessee is aggrieved by the order passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench at Mumbai on 25th July, 2013 in Appeal Nos. E/2731, 2738 and 2739 of 2004. These Appeals arose from the order dated 22nd June, 2004 of the Commissioner of Customs and Central Excise, Nashik.

2) The matter has a very chequered history. Mr. Prakash Shah appearing in support of this Appeal submits that the Tribunal's findings, even though they are on the point of extended period of limitation,

raise a substantial question of law. He would submit and relying upon the Judgment of the Hon'ble Supreme Court in the case of *ITW Signode India Ltd. vs. Collector of Central Excise*, reported in **2003 (158) ELT 403** that a finding on the question of limitation touches the jurisdiction of the authorities. There, the finding is that the period available under section 11A (4) of the Central Excise Act, 1944 could have been invoked. That was because the Appellant is guilty of suppression of material and relevant facts with an intent to evade payment of duty. Mr. Shah would submit that if the point of limitation involves jurisdiction of the authorities, then, the findings, though mixed in character, raise a substantial question of law.

3) He would submit that a substantial question of law also arises because the Appellant had been filing classification lists. These classification lists have been duly endorsed by the proper officer. In the circumstances, the law laid down by the Hon'ble Supreme Court in the case of *O. K. Play India Ltd. vs. Commissioner of Central Excise*, reported in **2005 180 ELT 300** and following it other Judgments of the Hon'ble Supreme Court would apply. For all these reasons, he would submit that the Appeal be admitted.

4) We are unable to agree with Mr. Shah and for more than one reason. The Assessee has a unit at Nashik in the State of

Maharashtra and engaged in the manufacture of iron and steel products falling under Chapter 72 of the Central Excise Tariff Act, 1985 attracting Nil rate of duty. By availing exemption under two Notifications, both dated 1st August, 1983, the Assessee filed a classification list with concerned proper officer, wherein it stated that as per the conditions of the Notifications re-rollable inputs or scrap falling under sub-items of erstwhile Tariff Act will be used in the manufacture of the said goods. In the classification list, it was stated that re-rollable scrap out of ship breaking in the form of beams, channels, angles and similar other scrap was used for manufacture of goods. The classification list was approved as claimed.

5) However, after the said classification lists were submitted, various audits were claimed to have been conducted by the officers of the Collectorate, Pune and Aurangabad, Central Excise Revenue Audit. The Appellant has set out details of such audits. However, the preventive officers from the Headquarter visited the factory premises, held investigation and then the competent authority proceeded to issue a show cause notice on the allegation that the Appellant manufactured goods out of non duty paid ship breaking scrap and non duty paid M. S. heavy rounds procured from various ship breakers and traders and cleared the goods at Nil rate of duty by availing exemption under the

above Notifications during 1st March, 1983 to 28th February, 1986. These dates are crucial because the show cause notice is dated 29th July, 1988.

6) This show cause notice was adjudicated and initially an ex-parte order was passed on 24th January, 1989, wherein, Central Excise duty of Rs.69,73,171.81 was confirmed and a penalty of Rs.5,00,000/- was imposed.

7) Against this order, an Appeal was preferred to the Tribunal, which came to be allowed and the matter was remanded for deciding the limited point of limitation.

8) On remand, an order was passed on 6th December, 1993, on which heavy reliance is placed by Mr. Shah. He would submit that in this order the Collector of Central Excise has categorically held that the audit party visited the factory premises and verified and scrutinised the record and that is how the extended period could not have been invoked by the Revenue.

9) However, Mr. Shah does not dispute that the matter was carried by the Revenue against this order to the Tribunal and on 29th March, 2001 once again a remand came to be ordered to decide as to whether the demand raised by the Revenue was barred by limitation.

On 25th October, 2001, the Commissioner/Collector held that the Appellant/Assessee suppressed the information and the demand is not barred by limitation. This resulted in confirmation of the duty demand and penalty. This time, the Assessee carried the matter to the Tribunal and once again on 18th September, 2003, the matter was remanded for fresh decision, as the Tribunal noted that there was a violation of principles of natural justice. On 22nd June, 2004 and this time on the final occasion, it was held that the demand was within the extended period of limitation. Thus, this is a finding of fact, which has been confirmed by the Tribunal.

10) True it is that there is a question of limitation and which could be said to be mixed question of fact and law. Further, true it is that if this extended period could not have been invoked by the Revenue, the demand was not tenable. However, we are not impressed by Mr. Shah's argument that there was a finding and which was in favour of the Assessee at any time. The first remand was ordered because the inputs were ship breaking scrap and that the audit parties proposed to carry out audit on particular dates, but the knowledge to the department could not be attributed of the audit inspection and at the relevant time. This was not established beyond doubt. Therefore, a remand was directed. Consequent upon such remand the Collector

proceeded to pass an order and which we find not at all to be satisfactory. The Tribunal found that the Collector exceeded the scope of his authority and in terms of the remand. He did not record specific finding. There was a simple opinion that the invoices under which the goods were purchased were shown by the Assessee to the audit party, who visited the factory premises, but when the visit took place and who, on behalf of the Assessee, showed these invoices, was not disclosed. There was no material on record to show that the invoices were initialed or signed by any member of the audit party in token of having gone through. Therefore, mere visit to the factory would not suffice in the given facts and circumstances nor could any reliance be placed upon the communications under which the audit party intimated the Assessee that they would visit the premises and the record should be kept ready.

11) Such is the finding and rendered by the Commissioner on 22nd June, 2004 which has been confirmed. We do not think that the Collector in any manner misdirected himself while recording a finding against the Assessee. Once the issue was only on limitation and given the situation where this Assessee had availed of a benefit of a Notification, but wrongly and by relying on the fact that the inputs which were non duty paid have been used in the manufacture of final products which carried Nil rate of duty. Thus, the evidence was

produced to show that the inputs had not suffered any duty. Consequently, the benefit of the Notification is not available to the Assessee. In these circumstances that reliance was placed on the audit inspection and to urge that the demand was time barred. It is unfortunate that this technical defence has resulted in repeated remands and the Revenue and its officers being engaged endlessly by the Tribunal and their superiors in considering the issue. In the given facts and circumstances, the Tribunal would have been well advised to decide the issue itself and in the first instance.

12) In the circumstances, we do not think that the Assessee can derive any benefit by mere filing of the classification lists or any endorsement thereon. Here the issue was whether the audit party was given an opportunity to inspect the materials and which came to be claimed as evidence of dutiable inputs. It is the Assessee who had relied upon such specific audit inspection. The matter had to be therefore decided in the light of the audit party inspection and the finding in the report thereof. Such being the nature of the controversy, no assistance can be derived from the authorities and rulings even if they are rendered by the Hon'ble Supreme Court in the case of *O. K. Play India Ltd.* (supra) and other Judgments.

13) As a result of the above discussion, we are of the opinion that the attempt of the Assessee is nothing but to seek a re-appreciation and reappraisal of a factual finding with an intention to delay meeting the demand. The attempt of this nature does not result in the Appeal being entertained by this Court. That is because it raises no substantial question of law. It is accordingly dismissed. No costs.

(SUNIL P. DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**