IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO. 1764 OF 2011

Kripa Fabs Pvt. Ltd.
rep. by its Managing Director
P.N.Selvakumar
No.15 & 16, Hanumantha Road
Balaji Nagar, Royapettah
Chennai 600 014. .. Appellant/Appellant

- Vs -

1. The Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan, 1st Floor,
26, Haddows Road, Chennai 600 006.

2. The Addl. Commissioner of Central Excise
Chennai II Commissionerate
MHU Complex
No.692, Anna Salai, Nandanam
Chennai 600 035. .. Respondents/Respondents

Appeal filed under Section 35-G of the Central Excise Act against the order dated 06.12.2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1225/2010.

For Appellant : Mr. N.Inbarajan

For Respondents: Mr. K.Mohanamurali, for R-2

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JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the appellant/assessee is before this Court by filing the present appeal. This Court, vide order dated 20.07.2011, while admitting the appeal, framed the following substantial question of law for consideration :-

"Whether the issue of show cause after a period of two and half years subsequent to the appellants voluntarily disclosing their affairs, was by itself

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sufficient for the Hon'ble CESTAT to have set aside the invoking of the extended period of limitation?"

2. The facts, in a nutshell, are as hereunder :-

The appellant is a manufacturer of tractor parts, parts of earth moving equipments, steel tables, chairs, etc. For the period 1998-99 and 1999-2000, the appellant crossed the small scale exemption limit. Once the appellant came to know about the crossing of the small scale exemption limit for the above two years, they voluntarily approached the respondent for payment of duty, which they failed to pay earlier. The Department, verified the same vide various proceedings like recording of statement, etc., dated 11.5.00 and 9.6.00. Thereafter, the Department issued a show cause notice to the appellant invoking proviso to Section 11A of the Central Excise Act claiming payment of duty, together with interest under Section 11AB and penalty under Section 11AC of the Central Excise Act read with Rule 173Q of the Central Excise Rules. On consideration of the reply, the adjudicating authority rejected the plea of no suppression and held as follows :-

> "16. Since the value of clearance have exceeded the SSI exemption limits during the relevant period, i.e., 1998-1999 and 1999-2000, the noticee is liable to pay duty on the clearance exceeding Rs.50 Lakhs, the then existing SSI exemption limit. This duty liability is not disputed by the noticee also. In fact in their reply dated 24.03.2003 and as well as during the course of personal hearing on 21.04.2003, the noticee themselves admitted that they are not disputing the demand of duty.
>
> 17. So the next question that needs to be decided is whether there are sufficient grounds for invoking the proviso to Section 11A or not. It is an admitted fact that till the Divisional Preventive Unit had visited the unit on 11.05.2000 and investigated the case, the activities of M/s.KRIPA were not known to the department. This is due to the fact that the noticee has not taken any Central Excise Registration nor filed the required declaration with the department. It is clear that M/s.KRIPA are aware that they are an SSI unit and they are eligible for a duty exemption upto Rs.50 lakhs during the years 1998-99 and 1999-2000. In fact, Shri P.N.Selvakumar, Managing Director admitted in his statement dated 09.06.2000 that due to pressure of work, they did not file the necessary declaration with the Central Excise authorities as contemplated in the Central Excise Rules. Once it is admitted that duty liability had arisen on their crossing the exemption limits of Rs.50 lakhs during 1998-99 and 1999-2000 and the assessee knowingly remained silent, the fact of crossing the exemption limit working was not known to the department until the officers visited the factory on 11.5.2000. In these circumstances, I am of the view

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that the ingredient of suppression of fact is established and the extended period of 5 years for the demand of duty under proviso to Section 11A of the Act is justifiably invoked. The submission made by M/s.KRIPA that they made the voluntary disclosure to the department, i.e., before the departmental officers visited the unit is of no avail, since the contravention of the various Central Excise provisions on account of the wilful non-payment of duty had already taken place.

18. Hence I reject the contention of M/s.KRIPA that there had been no suppression with intent to evade payment. It is expected of every assessee to determine and discharge his duty liability once the exemption limit is crossed and the law will not help any one who violates them in utter disregard.

19. Having decided that there is sufficient ground for invoking the extended period, the next issue that calls for my decision is the duty liability during 1998-99 with regard to the inclusion of raw material and labour in the value as contested by M/s.KRIPA. It is a well known fact that labour and raw material costs form a major component of the assessable value on which excise duty is discharged. I find that the assessee while seeking the relief on this count did not produce any tangible evidence to demonstrate as to how this was incorrectly included while calculating their duty liability. Therefore, I reject their request for relief on cash bill sales made during the year 1998-1999."

3. Aggrieved by the said order of the adjudicating authority, the assessee preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide order dated 21.5.2004, rejected the appeal filed by the appellant/assessee and held as hereunder :-

"The lower authority has held that "In fact Shri P.N.Selvakumar, Managing Director admitted in his statement dated 09.06.2000 that due to pressure of work, they did not file the necessary declaration with the Central Excise authorities as contemplated in the Central Excise Rules. Once it is admitted that duty liability had arisen on their crossing the exemption limits of Rs.50 lakhs during 1998-99 and 1999-2000 and the assessee knowingly remained silent, the fact of crossing the exemption limit working was not known to the department until the officers visited the factory on 11.5.2000. In these circumstances, I am of the view that the ingredient of suppression of fact is established and the extended period of 5 years for the demand of duty under proviso to Section 11A of the Act is justifiably invoked. The submission made by M/s.KRIPA that they made the voluntary disclosure to the department, i.e., before the departmental officers

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visited the unit is of no avail, since the contravention of the various Central Excise provisions on account of the wilful non-payment of duty had already taken place."

It is evident from the case-records that the appellants had neither taken Central Excise registration nor paid the duty during the relevant time. Hence, I do not find any infirmity in the impugned order. Hence I uphold the impugned order and reject the appeal."

4. Against the said rejection of the appeal, the appellant pursued the matter before the Tribunal. The Tribunal, on considering the matter, confirmed the order of the Commissioner (Appeals) rejecting the plea of no suppression advanced by the appellant/assessee. The relevant portion of the order of the Tribunal, for better clarity, is extracted hereinbelow :-

"5. However, it was incumbent on the appellants to declare to the department as soon as they exceeded the small scale exemption limit of Rs.50 lakhs, in the year 1998-99 and 1999-2000. It was also incumbent on the appellants to discharge duty liability on clearances in excess of the exempted production. There was, therefore, a clear case of suppression regarding production in excess of small scale exemption limit and clearance on such excess production without payment of duty. Such suppression cannot be wished away by the belated information given by the appellants to the excise department during the next financial year and to justify a claim that no duty should be levied on the ground of limitation. When there is suppression, the statute provides a time period of five years from the relevant date to raise a duty demand. The demand raised in this case is clearly within the statutory limit of five years, though, it is not known why the departmental authorities took more than two and half years to issue the show cause notice. We also note that initially in reply to the show cause notice, the appellants had expressed their readiness to pay the duty amount.

6. Since there has been a suppression regarding the production in excess of the small scale exemption limit, and there has also been non-payment of duty on such clearances during the relevant financial year, and since the show cause notice has been issued within the prescribed longer period of five years applicable in such cases, we are of the view that the demand of duty confirmed by the authorities below is legal and proper and the same requires no interference. Consequently, the demand of interest and imposition of equal penalty under Section 11AC of the Act are also justified."

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Aggrieved by the order of the Tribunal in dismissing the appeal, the appellant/assessee is before this Court by filing the present appeal.

5. Heard the learned counsel appearing for the appellant/assessee and the learned standing counsel appearing for the respondent/Department and perused the materials available on record.

6. The substantial question raised by the appellant that the Tribunal ought to have set aside the demand holding that the extended period of limitation will not arise in its case, has been considered and held by the Tribunal on the plea of suppression of production in excess of small scale exemption limit and there has been failure on the part of the appellant to discharge the duty liability on clearance in excess of the exempted production. The adjudicating authority, the Commissioner (Appeals) as well as the Tribunal concurrently have come to the clear conclusion that it is a case of suppression and, therefore, this Court finds no reason to differ with the well considered finding of fact recorded by the authorities below, in the absence of any material to the contrary. The fact of suppression has been reiterated by all the authorities in their order and the Tribunal has also taken note of the same in coming to its well considered finding.

7. As has been rightly pointed out by the Tribunal in its order that subsequent information by the assessee to the respondent/Department cannot justify a plea of no suppression. The act of suppression had already happened at the time of clearance of the exempted goods in excess of the exemption limit and, therefore, it is not open to the assessee to plead a case of no suppression. In such view of the matter, this Court finds no infirmity in the order passed by the authorities below warranting interference in this appeal. Accordingly, the substantial question of law is answered against the appellant/assessee and in favour of the respondent/Department.

8. In the result, this appeal fails and the same is dismissed confirming the order passed by the Tribunal. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Customs, Excise & Service
    Tax Appellate Tribunal
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    26, Haddows Road, Chennai 600 006.

2. The Addl. Commissioner of Central Excise
    Chennai II Commissionerate
    MHU Complex
    No.692, Anna Salai, Nandanam
    Chennai 600 035.

Copy to:
The Commissioner of Central Excise, (Appeals)
26/1 Mahatma Gandhi Road,
Chennai.

+1 cc to Mr.N.Inbarajan, Advocate,SR.2714

+1 cc to Mr.K.Mohanamurali, Advocate,SR.26897.

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