IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.01.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. NO. 1186 OF 2006

Commissioner of Central Excise
Chennai. .. Appellant/Appellant/Respondent

- Vs -

M/s.Allied Industries
No.1, T.H. Road
Chennai 600 081. .. Respondent/Respondent/Appellant

Appeal filed under Section 35-G of the Central Excise Act, against the order dated 15.7.05, passed by Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1020/2005 against the order in appeal N0.11/04 (M-1) dt. 30.1.04 passed by the Commissioner of central Excise (Appeals) Chennai, and against the order in O.No.46/03 dt. 24.06.2003 passed by Deputy Commissioner of Central Excise 'D' Division Chennai, commissioner, Chennai-34.

For Appellant : Mr.Vikram Ramakrishnan

For Respondent : No Appearance

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Tribunal in reducing the penalty imposed on the assessee under Section 96 ZP (3) of the Central Excise Rules, the Revenue is before this Court by filing the present appeal. This Court, vide order dated 28.4.06, admitted the appeal on the following substantial questions of law :-

> “i) Whether the Commissioner (Appeals) and the Appellate Tribunal are right in reducing the penalty from Rs.37,818/= to Rs.5,000/= when the said penalty was imposed in accordance with Rule 96 ZP (3) of the Central Excise Rules, 1944, which is mandatory by law, when the respondent has committed default in payment of duty?
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> ii) Whether the Commissioner (Appeals) and the Appellate Tribunal have wrongly exercised a power which is not vested in them under law?”

2. The respondent is a manufacturer of iron and steel products falling under Chapter 72 of the Central Excise Tariff Act, 1985. The respondent filed declaration opting for payment of duty under the compounded levy scheme in terms of sub-section (1) of Section 3A of the Central Excise Act read with Rules 96 ZP of the Central Excise Rules and accordingly, duty was determined by the Commissioner. Under the provisions of Rule 96 ZP (3) of the Rules, the manufacturer, who had opted for compounded levy scheme will have to pay the whole amount of duty so determined by the 10^{th} day of such month and on failure to pay the amount, the duty is liable to be paid alongwith interest and penalty is also leviable. Since the respondent/assessee failed to pay the duty as prescribed, show cause notice dated 24.9.98 was issued demanding payment of duty with interest and penalty was also proposed. After due process of law, the sum as was payable was re-determined and the Deputy Commissioner also fixed the penalty at Rs.37,818/= under Rule 96 ZP (3) of the Rules.

3. Aggrieved by the said order of the Deputy Commissioner, the assessee/respondent preferred appeal before the Commissioner (Appeals), who, vide order dated 30.1.04, reduced the penalty to Rs.5,000/=. Aggrieved against the said order, the appellant/Department filed appeal before the Appellate Tribunal. The Tribunal, on consideration of the case, upheld the order of the Commissioner (Appeals), against which the present appeal is filed by the Department/appellant.

4. Heard Mr.Vikram Ramakrishnan, learned standing counsel appearing for the Department/appellant. Though notice has been served, there is no representation for the respondent.

5. It is brought to the notice of the Court by the learned standing counsel appearing for the appellant/Revenue that the issue stands covered by the decision of the Supreme Court in Commissioner of Customs & Central Excise, Coimbatore - Vs - Kannapiran Steel Re-Rolling Mills (2010 (15) SCC 161), wherein the Supreme Court has considered identical question of reduction of penalty imposed under Rule 96 ZP (3) of the Central Excise Rules, and held as under :-

> "5. The counsel appearing for the appellant Revenue has submitted before us that the aforesaid issue is no longer res integra in view of the decision rendered by a three-Judge Bench of this Court in Union of India v. Dharamendra Textile Processors. The counsel submits that in the said decision what was interpreted by this Court was Rule 96-ZQ and Rule 96-ZO. The counsel also submits that what is applicable to the facts and circumstances of the present case is Rule 96-ZP which is also in pari materia and identical with Rule 96-ZQ and Rule 96-ZO.
>
> 6. In order to appreciate the aforesaid contentions of the counsel appearing for the appellant, we have perused the provisions of Rule 96-ZP and compared the said provisions with that of Rule 96-ZQ and Rule 96-

ZO. On such appreciation and comparison what we find is that the provisions of Rule 96-ZP are in pari materia and are identical with that of Rule 96-ZQ and Rule 96-ZO.

7. In Dharamendra case this Court referred to the Union Budget of the year 1996-1997 wherein Section 11-AC of the Act was introduced and therein the position was made clear that there is no scope for any discretion. This Court also referred to Para 136 of the Union Budget in which reference was made to the provisions stating that the levy of penalty is a mandatory penalty and that in notes on clauses also the similar indication has been given.

8. After considering all the aspects concerned, this Court finally held that the plea that Rule 96-ZQ and Rule 96-ZO have a concept of discretion inbuilt cannot be sustained meaning thereby that the said Rules are mandatory and there is no discretion available for reducing the penalty. The provisions of Rule 96-ZP being identical and in pari materia with that of Rule 96-ZQ and Rule 96-ZO, the ratio of the aforesaid decision rendered by a three-Judge Bench is squarely applicable to the facts and circumstances of the present case.

9. Consequently, we allow these appeals and set aside the order passed by the High Court as also by the Tribunal and restore the order passed by the adjudicating authority, leaving the parties to bear their own costs."

6. In the light of the abovesaid decision of the Supreme Court, the substantial questions of law are answered in favour of the Revenue and against the assessee. Accordingly, the order of the Tribunal stands set aside and this Civil Miscellaneous Appeal stands allowed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. Commissioner of Central Excise
   Chennai.

2. Customs, Excise & Service
   Tax Appellate Tribunal
   South Zonal Bench
   Chennai 600 006.

3. The Commissioner of Central Excise
(Appeals) 27/1 Mahatma Gandhi road, Chennai-34.

4. The Deputy Commissioner of Central Excise,
'D' Division - Chennai-I, Commissioner Chennai-34.

C.M.A. NO. 1186 OF 2006

RSY(CO)
Eu 20.02.15