

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.01.2015

CORAM

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

C.M.A. NO. 2775 OF 2007

The Commissioner of Central Excise
Chennai - 1 Commissionerate
No.26/1, Mahatma Gandhi Road
Nungambakkam
Chennai 600 034.

...Appellant/Respondent

- Vs -

1. The Tamil Nadu Petro Products Ltd.
Manali Express Highway
Manali
Chennai 600 068.

2. Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench,
Shastri Bhavan Annexe, Haddows Road,
Chennai-1.

...Respondents/Appellants

Appeal filed under Section 35-G (2) of the Central Excise Act,
against the order dated 11.07.2006 passed by the Customs, Excise &
Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in
Final Order No.593 of 2006.

For Appellant : No Appearance

For Respondents : No Appearance

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JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal
filed by the assessee, the Revenue is before this Court by filing the

present appeal. This Court, vide order dated 6.11.2007, while admitting the appeal, framed the following substantial question of law for consideration:-

"Whether the Tribunal is correct in holding that the penalty imposed on the assessee under Rule 25 is not sustainable on the ground of violation of Rules 4 and 6 under the facts and circumstances where the manufacturer of excisable goods has removed the goods on payment of only a portion of duty leviable or payable in terms of Rules 4 and 6 of the Central Excise Rules, 2002?"

2. The facts of the case in brief are that the 1st respondent manufactured and removed Epichloro Hydrin (for short 'ECH') and supplied it to M/s.Petro Araldite Pvt. Ltd. (for short 'PAPL'). The 1st respondent company was manufacturing the said goods as a joint venture company with M/s.Ciba-Geigy Ltd., Switzerland and the Indian collaborator company was M/s.Ciba-Geigy India Pvt. Ltd.

3. According to the special agreement dated 22.1.98 entered between the 1st respondent/assessee and PAPL, the raw material, viz., ECH, required by PAPL had to be supplied by the 1st respondent/assessee. There were also agreements like Plant Technology Transfer Agreement, Process Technology Transfer Agreement and Service Agreement entered into between the parties. Based on these agreements, 86% of the production of ECH by the 1st respondent/assessee was supplied to PAPL at a price agreed to between the parties and the remaining 14% was supplied to other buyers in India at a price higher than the price charged to PAPL. Till August, 2001, the assessee was paying duty on ECH cleared to PAPL by treating the transaction value of the goods as its assessable value under Section 4 (1) (a) of the Central Excise Act and this was not objected to by the Department. However, the valuation of the goods cleared to PAPL from September, 2001 was questioned by the Department by a series of show cause notices, wherein the Department contended that the assessee and PAPL were related persons in terms of Section 4 (3) (b) (iv) of the Central Excise Act and took the view that the value of ECH sold to PAPL is to be determined for the purpose of assessment of duty in terms of Section 4 (1) (b) of the Act read with Rules 8, 9 and 10 of the Central Excise Valuation Rules, 2000. In the show cause notices, interest was also demanded under Section 11AB apart from proposing penalties under the Central Excise Rules.

4. It appears that there was a first round of litigation and the matter came before the Tribunal in a batch of appeals. The appeals were disposed of by order dated 4.8.05 made in Final Order Nos.1079 to 1081/2005 reported in 2006 (193) ELT 430 (Tri-Chennai)

(Commissioner of Central Excise, Vhennai - Vs -Tamil Nadu Petro Products Ltd.). In the said case, it is the finding of the Tribunal that there was a case of mutual interest between the 1st respondent/assessee and PAPL and, therefore, Section 4 (1) (b) would govern the valuation. It further held that the goods should be valued in terms of Rule 11 of the Central Excise Valuation Rules and not under Rules 8, 9 and 10, as proposed by the Department. Accordingly, the matter was remanded to the Commissioner for fresh decision.

5. On remand, after affording opportunity to the 1st respondent/assessee, the Commissioner passed an Order-in-Original Nos.62 to 66/2005 dated 30.11.2005, whereby the demand of duty against the 1st respondent/assessee under Section 11A of the Central Excise Act was confirmed and the Commissioner also imposed a penalty of Rs.50,000/= under Rule 25 of the Central Excise Rules, 2002 and interest on duty was also demanded under Section 11AB of the Act.

6. Aggrieved against the said order of the Commissioner, the assessee preferred appeal before the Tribunal. The Tribunal, on a careful perusal of the factual matrix of the case and relying upon the earlier decisions of the Tribunal in the assessee's case, came to the conclusion that demand for duty on the basis of valuation done under Section 4 (1) (b) is correct and the valuation based on Rule 11 is most appropriate. The Tribunal, in its order, held as under :-

"4. In the circumstances, we are of the considered view that the valuation of the goods was correctly done in terms of rule 11 pursuant to the remand order of the Tribunal. It is also pertinent to note that no alternative reasonable method was suggested by the assessee before the adjudicating authority."

On the above finding, the Tribunal dismissed the appeal filed by the assessee against the assessment made by the Commissioner and sustained the duty demanded by the impugned order.

7. The only issue, thereafter, left for the Tribunal to consider was on penalty. For better clarity, the finding of the Tribunal in relation to imposition of penalty and the order thereof, is extracted hereinbelow :-

"6. In relation to the penalty imposed on the assessee, we have found substance in the submissions made by learned counsel. The Commissioner found violations of Rule 4 and 6 of the Central Excise Rules, 2002 by the assessee. Rule 4 required correct assessment of excisable goods and Rule 6 required payment of appropriate duty thereon. The Revenue has

no case that the assessee did not self-assess the goods or pay duty thereon. In other words, it is not their case that the goods in question were removed otherwise than in terms of Rules 4 and 6. Hence we are unable to sustain the penalty imposed on the assessee under Rule 25 on the ground of violation of Rules 4 and 6. However, the assessee cannot resist demand of interest on duty under Section 11AB of the Act.

7. In the result, the appeal is allowed only to the extent of setting aside the penalty imposed on the appellants by the Commissioner. The impugned order will stand modified accordingly."

Aggrieved against the said order of the Tribunal in setting aside the penalty imposed on the 1st respondent/assessee, the Revenue is before this Court by filing the present appeal on the above question of law.

8. When the case was taken up, there is no representation either on behalf of the appellant or the respondent. However, after perusal of the entire records available in the typed set of papers, this Court is inclined to pass the order on the merits of the matter.

9. From the records, it is evident that the Tribunal held that on self-assessment, the duty was paid and the goods were removed as required under Rules 4 and 6. The only question that needs to be decided is whether there was justification for invocation of Rule 25. The Tribunal came to hold that when there is no violation of Rules 4 and 6, penalty cannot be imposed under Rule 25. On a reading of Rules 4, 6 and 25, it is clear that once it is found that there is no violation of Rules 4 and 6, penalty cannot be imposed under Rule 25 and, therefore, the finding of the Tribunal on that aspect of the matter has to be sustained.

10. In view of the above provision of law and the order of the Tribunal, we find no reason to differ with the findings as the said decision of the Tribunal is in accordance with the provisions of the said Rules. This Court is of the considered view that a perusal of the grounds of appeal would also reveal that there is no serious error or infirmity in the said finding of the Tribunal. The merit of the order of the Tribunal insofar as the demand for duty and interest is not a matter, which is under challenge before this Court.

11. In such view of the matter, this Court holds that there is no reason to differ with the findings as recorded by the Tribunal. Therefore, the substantial question of law is accordingly answered in favour of the assessee and against the Revenue. There being no

merits, this appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(LA)

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Sub Assistant Registrar

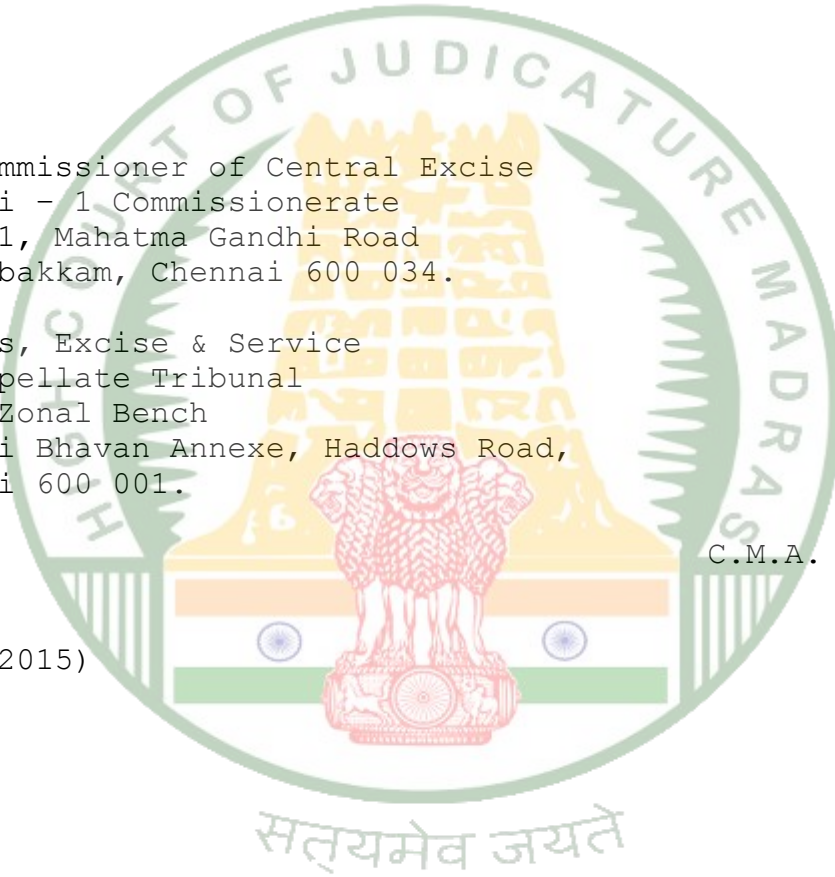
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To

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KM (CO)
PSI(10.02.2015)



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