*** THE HON'BLE SRI JUSTICE G. CHANDRAIAH**

AND

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A. No. 8 of 2006

08.07.2015

Between

The Commissioner of Customs and Central Excise, Visakhapatnam

…Appellant

$ M/s Andhra Pradesh Paper Mills Ltd., East Godavari District,
Andhra Pradesh

...Respondent

! Counsel for the Appellant : Mr. Gopala Krishna Gokhale

^ Counsel for the Respondent : Mr.Karan Talwar, advocate
(representing Mr. Lakshmi Kumaran & Sridharan,
counsels for the respondent)

< Gist:

> Head Note:

? CITATIONS:

1989 (40) E.L.T 279
2000 (122) E.L.T 327 (S.C.)
1998 (100) E.L.T. 8 (S.C.)
1996 (87) E.L.T. 593 (S.C.)
1989 (43) E.L.T. 195 (S.C.)
1995 (78) E.L.T. 401 (S.C.)
1994 (74) E.L.T. 9 (S.C.)

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ORDER:- (per Hon'ble Sri Justice Challa Kodanda Ram)

This appeal, at the instance of Revenue, is directed against the order dated 04.02.2005 in Appeal No.E/669/2003, raising the following substantial question of law:

> **"Whether the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore, was right in rejecting extended period of demand under Section 11A of Central Excise Act, 1944 and in not restoring levy of mandatory penalty under Section 11AC, levy of interest under Section 11AB of the Act and penalties under Rules 173Q and 226 of Central Excise Rules, 1944, holding that no mis-declaration or suppression was made by the respondent."**

2. Heard Mr. Gopala Krishna Gokhale, learned counsel for the appellant and Mr. Karan Talwar, counsel representing Mr. Lakshmi Kumaran & Sridharan, counsel for the respondent.

3. Having heard both the counsel and having perused the record, we find that there is ample justification for the Tribunal to come to the conclusion that there was no suppression of turnover, much less mis-declaration. Though the show-cause notice alleged suppression and mis-declaration, the adjudicating authority-Commissioner, in his Order-in-Original

dated 02.05.2002 had recorded as under:

> **"38. The show cause notice has gone to add that jute waste is not gunny bag waste and as the party has not mentioned in their record jute waste and not gunny bag waste, there has been suppression of information. So long as we hold that rags are not gunny bag waste and gunny bags are not excluded raw materials for the purpose of concession, it does not matter how the gunny bag is described in documents. The amendments to Central Excise Notification No.48/91 dt.25.7.94 vide 30/93 shows unambiguously that Jute Waste shall include old gunny bag waste. Therefore, it still remains correct that gunny bag waste can be described as waste of jute products and in extension would be includible in Jute Waste. Therefore, there is not misdeclaration in raw material account. In addition, this description by itself would not prove the point of the show cause notice. As the basic premises on which the SCN stands is not available, other allegations of suppression and application of extended period and attraction under Section 11AC and 11AB or violations under Rule 226 and 173Q are not sustainable.**
>
> **39. Therefore the allegation listed in Para 42 of the show cause notice regarding violation of Rule 173B by misdeclaring gunny waste as jute waste, Rule 173 G regarding wilful suppression of Raw Material account. Rule 9(1) regarding discharge of appropriate duty and 173F regarding determination of correct rate of duty pertaining to clearances of goods out of gunny bag pulp do not stand on basis of above evidence of discussions.**
>
> **40. The facts of usage of different raw materials, accounting of duty payable has been obtained from assessee's records. Except the usage word jute waste Vs. Gunny Waste no other discrepancy has been brought on record. Hence the charge of**

violation of Rule 226 also does not stand."

4. Even before the Tribunal, there was no material placed to controvert the finding of the Commissioner as recorded in the Order-in-Original. The Tribunal had also, considering the fact that when there was a scope for doubt whether the goods were dutiable or not, refused to apply extended period of limitation. The Tribunal relied on the judgments of the Supreme Court in **Camphor Drugs and Laminates**[1], **Collector v. Himalayan Co-op. Milk Product Union Ltd.**[2], **Collector v. Malleable Iron & Steel Castings Co. (P) Ltd.**[3], **H.M.M. Ltd. v. Collector**[4], **Padmini Products v. Collector**[5], **Pushpam Pharmaceuticals Company v. Collector**[6] **and Tamil Nadu Housing Board v. Collector**[7], and refused to set aside the Order-in-Original with respect to the limitation by extending the extended period of limitation. Inasmuch as both the primary authority as well as the appellate Tribunal has found, as a matter of fact, that there was a genuine doubt with respect to dutiability, both the authorities did not find it appropriate to apply extended period of limitation to the facts of the case.

5. We do not see any reason to interfere as it is purely a finding of fact recorded by the authorities on appreciation of the material on record. Hence, the appeal is liable to be dismissed.

6. The appeal is, accordingly, dismissed. No costs.

Miscellaneous petitions, if any pending in this appeal, shall stand closed.

G. CHANDRAIAH, J

CHALLA KODANDA RAM, J

08th July, 2015

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