

***HON'BLE SRI JUSTICE G. CHANDRAIAH**
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+C.E.A. No. 12 of 2006

%15-07-2015

Commissioner of Customs and Central Excise
....Appellant

Vs.

\$ M/s.Grip Engineers (P) Ltd. Respondent

!Counsel for the Petitioner: S.C. for Customs and Central Excise

Counsel for Respondent: Sri N.Vijay

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>Head Note:

? Cases referred:

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JUDGMENT:- (per Hon'ble Sri Justice G. Chandraiah)

This Central Excise Appeal under Section 35G of the Central Excise Act, 1944 as substituted by the Finance Act, 2003 (for brevity "the Act") is filed at the instance of the Department against the Final Order No. 1018 / 2005, dated 28.06.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short "CESTAT") by raising the following questions of law for adjudication.

- i) "Whether the Tribunal is justified in holding that the demand is time barred without going into the merits of the case including the scope of Section 110 of Finance Act, 2000 which has validated the action taken under Section 11A of Central Excise Act 1944 only on the ground that the respondent filed relevant declarations and that there is no suppression of facts which is against the principle laid down by the Apex Court regarding invocation of extended period of limitation under proviso to Section 11A of Central Excise Act, 1944?
- ii) Whether the Tribunal is correct in coming to the conclusion that the demand as time barred without appreciating the fact that willful mis-declaration with an intent to evade payment of duty on the part of the respondent-company is sufficient enough to invoke proviso to Section 11A(1) of Central Excise Act, 1944?
- iii) Whether the Tribunal is correct in dismissing the appeal filed by the department on a point of law said to have been raised at that stage without appreciating the fact that it is already adjudicated by the original adjudicating authority and without considering the grounds on the basis of which the appeal was filed before the Tribunal?
- iv) Whether allowing exemption to certain goods under a notification merely under the presumption that the benefit of the notification is to be read with reference to the legislative intention behind it, irrespective of the fact that

the said goods are not covered by the list annexed to the said notification which is a mandatory requirement for allowing the exemption, is correct or not?

- v) Whether the exemption from payment of duty can be granted on the goods which are not specified in the Notification in view of the law laid down by the Apex Court that the exemption notifications have to be strictly construed and onus to claim exemption lies on the assessee and payment of duty is a rule and exemption is an exception?"

The respondent-company, which is a manufacturer of material-handling equipments like H.O.T. Cranes and parts thereof falling under Chapter Sub-heading No.8426.00 of the Central Excise Tariff Act, 1985, was issued a Show Cause Notice on 22.04.2003 alleging irregular availment of exemption on their final products under Notification No.6/2000/CE, dated 01.03.2000 and cleared the goods on six invoices at "Nil" rate of duty in terms of Serial No.251 read with table item No.16 of List 5 of the Notification and demanding them to pay Central Excise duty of Rs.2,41,520/-. The Additional Commissioner of Customs & Central Excise, who is the adjudicating authority, vide Order-in-Original dated 23.03.2004, confirmed the show cause notice by virtue of the proviso to Section 11A of the Act. Being aggrieved by the order of the adjudicating authority, an appeal was preferred by the respondent, and the Commissioner (Appeals), vide order dated 24.09.2004, set aside the order-in-original holding that the exemption notification is available not only to the individual equipment but also to

the system as a whole. Against the order of the Commissioner (Appeals), the Department preferred an appeal before the Tribunal, which, by the impugned Final Order dated 28.06.2005, dismissed the appeal on the ground that the original demand is time-barred. Challenging the order of the Tribunal, the Revenue has instituted the present appeal.

The learned Standing Counsel for Customs and Central Excise appearing for the appellant has submitted that as mandated in proviso to Section 11A of the Act, the statutory authority issued show cause notice to the assessee beyond the period of one year only on finding that the assessee suppressed material facts. The Tribunal ought to have considered material on record and ought not to have decided the appeal only on question of limitation without adverting to other issues raised.

The learned counsel for the respondent has submitted that the Tribunal, after considering all the relevant declarations filed by the assessee, passed the impugned order and there was no suppression of facts at all, and the very issuance of show cause notice by the statutory authority is bad in law as the same is time-barred, and prays to dismiss the appeal.

Heard the learned counsel for both the parties and perused the material placed on record.

Section 11A of the Act reads as under:

11A. Recovery of duties not levied or not paid or short levied or short-paid or erroneously refunded:- (1) When any

duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, whether or not such non-levy or non-payment, short-levy or short payment or erroneous refund, as the case may be, was on the basis of any approval, acceptance or assessment relating to the rate of duty on or valuation of excisable goods under any other provisions of this Act or the rules made thereunder, a Central Excise Officer may, within one year from the relevant date, serve notice on the person chargeable with the duty which has not been levied or paid or which has been short-levied or short-paid or to whom the refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice:

Provided that where any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of fraud, collusion or any willful mis-statement or suppression of facts, or contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, by such person or his agent, the provisions of this sub-section shall have effect, as if for the words one year, the words "five years" were substituted."

The facts of the case are not in dispute. Show cause notice was issued to the assessee on 22.04.2003 i.e. beyond the period of one year from the date of clearance of excisable goods invoking proviso to Section 11A of the Act, and the extended period of five years was made applicable. Extended period would apply only in cases where there is suppression of material facts, collusion or any willful mis-statement, etc. made by the assessee. In the instant case, the finding of the Tribunal is categorical that since respondent-company filed all the relevant declarations there was no suppression of the facts. We find that no question as such was raised making an issue that findings recorded by the Tribunal are perverse and based on no material. No material as such was placed

before us to take a contra view. It is well-settled that the Tribunal is the last fact finding authority and the High Court is required to accept the findings recorded by the Tribunal except where there is a specific challenge to the findings raising any questions of perversity supported by relevant material. Hence, we see no ground to interfere with the well-reasoned order passed the Tribunal.

Therefore, the appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to the dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

15.07.2015

CHALLA KODANDA

RAM,J

Note: L.R. Copy to be marked

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