

*** THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

+C.E.A. Nos.20, 25 and 27 OF 2006

% Dated : 16.09.2015

The Commissioner of Central Excise & Customs, Hyderabad-II,
Commissionerate,
L.B. Stadium Road, Basheerbagh, Hyderabad.

..... Appellant

AND

\$ M/s. Crafts Interiors (P) Limited and others

..... Respondents

! Counsel for Appellant : Mr. Gopala Krishna Ghokhale

^Counsel for Respondent : NA

<GIST :

>HEAD NOTE :

? Cases referred :

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

C.E.A. Nos.20, 25 and 27 of 2006

Between:

The Commissioner of Central Excise & Customs,
Hyderabad-II Commissionerate,
L.B. Stadium Road, Basheerbagh,
Hyderabad. ... Appellant

And

M/s. Crafts Interiors (P) Limited and others ... Respondents

JUDGMENT PRONOUNCED ON 16.09.2015

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**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? :
2. Whether the copies of judgment may be
marked to Law Reporters/Journals. :
3. Whether their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

**THE HON'BLE SRI JUSTICE G. CHANDRAIAH
AND
THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**

C.E.A. Nos.20, 25 and 27 of 2006

COMMON JUDGMENT: (Per the Hon'ble Sri CKR, J)

These three appeals arise out of the common order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 10.05.2005 disposing of the appeals filed by the respondent.

The respondent is engaged in the business of interior decoration, manufacture and supplier of furniture. With respect to certain of the works undertaken by the respondent, the order in original dated 26.03.2004 came to be passed and extended period of limitation was invoked. The duty penalty under section 11AC of the Central Excise Act, 1944 (for short "the Act") and also under Rule 173Q apart from penalty under Rule 209A of Central Excise Rules, 1944 were determined and demanded from the respondent.

Aggrieved by the order in original, the respondent filed appeals before the CESTAT, Bangalore.

The adjudicating authority, after considering the material on record and analyzing the facts, found that the major extent of demand pertains to the work, in fact, executed at site and thus not liable for excise duty and thus, such transactions are not liable for levy of excise duty. However, with respect to part of the transactions, the adjudicating authority found the same liable to excise duty and demanded tax duty and penalty.

The order of the adjudicating authority was challenged before the CESTAT, Bangalore and after detailed analysis of the facts the Tribunal came to the conclusion that certain factual aspects are required to be reworked out and thereby, a revised demand is required to be made determining the duty liability while remanding back the case to the adjudicating authority for re-determination of the transactions, which are actually liable for tax. The Tribunal on appreciation of the facts directed to limit the penalty not to exceed 10%.

Now the Department is in appeal raising the substantial question of law that "*Whether the CESTAT has power to reduce the mandatory penalty equivalent to duty imposed under Section 11 AC of the Central Excise Act, 1944, especially when the invocation of the longer period on the ground of suppression of fact was justified in view of the Hon'ble Supreme Court judgment reported in case Sony India Ltd., {2004(167)E.L.T.385(S.C.)}*"

In spite of notice there is no appearance on behalf of the respondent.

Heard the learned counsel Sri Gopala Krishna Ghokhale for department.

On perusal of the order, it reveals that the entire tax duty demanded in each of the case is Rs.36,949/-, Rs.45,101/- and Rs.4,41,386/- in appeal CEA. Nos.20, 25 and 27 of 2006 respectively.

Now, in the light of the order of the Tribunal, the actual tax amount itself required to be re-determined as the matter has been remanded back to the adjudicating authority. In other words, the very tax demand itself is likely to workout to meager amount. At relevant point of time, 11 AC reads as under:

“SECTION 11AC. Penalty for short-levy or non-levy of duty in certain cases. —

Where any duty of excise has not been levied or paid or has been short-levied or shortpaid or erroneously refunded by reasons of fraud, collusion or any wilful 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, the person who is liable to pay duty as determined under sub-section (2) of section 11A, shall also be liable to pay a penalty equal to the duty so determined :

[Provided] that where such duty as determined under sub-section (2) of section 11A, and the interest payable thereon under section 11AB, is paid within thirty days from the date of communication of the order of the Central Excise Officer determining such duty, the amount of penalty liable to be paid by such person under this section be twenty-five per cent. of the duty so determined :

Provided further that the benefit of reduced penalty under the first proviso shall be available if the amount of penalty so determined has also been paid within the period of thirty days referred to in that proviso :

Provided also that where the duty determined to be payable is reduced or increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, for the

purposes of this section, the duty as reduced or increased, as the case may be, shall be taken into account :

Provided also that in case where the duty determined to be payable is increased by the Commissioner (Appeals), the Appellate Tribunal or, as the case may be, the court, then, the benefit of reduced penalty under the first proviso shall be available, if the amount of duty so increased, the interest payable thereon and twenty-five per cent. of the consequential increase of penalty have also been paid within thirty days of the communication of the order by which such increase in the duty takes effect.

Explanation. - For the removal of doubts, it is hereby declared that -

(1) the provisions of this section shall also apply to cases in which the order determining the duty under sub-section (2) of section 11A relates to notices issued prior to the date on which the Finance Act, 2000 receives the assent of the President;

(2) any amount paid to the credit of the Central Government prior to the date of communication of the order referred to in the first proviso or the fourth proviso shall be adjusted against the total amount due from such person.]”

Though the Tribunal had justified invocation of extended period of limitation by the adjudicating authority the fact remains that the tax demanded turn out to be a small amount of Rs.36,949/-, Rs.45,101/- and Rs.4,41,386/- in appeal CEA. Nos.20, 25 and 27 of 2006, respectively. The 3rd proviso to the amended Section 11AC provides discretion to the Tribunal with respect to the penalty.

In the present case, what all the Tribunal has done is given a direction to the adjudicating authority in view of the facts of the case to take into consideration and limit the penalty not to exceed 10% of the tax demand. In such circumstances, we do not find any infirmity with the order of the Tribunal and we may also notice the very question raised in the present case would become academic in view of the fact that Section 11AC came to be substituted by Finance Act, 2011 with entirely new provisions where different rates of penalties have been prescribed.

Accordingly, these appeals are dismissed.

As a sequel, miscellaneous petitions, if any, stands closed. There shall be no order as to costs.

JUSTICE G.CHANDRAIAH

JUSTICE CHALLA KODANDA RAM

Date: 16.09.2015
LSK