IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.2.2016.

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.2903 of 2014
and
M.P.Nos.1 of 2014 and 1 of 2015

M/s.Sujana Metal Products Limited,
(formerly known as M/s.Sujana Steels Limited),
Krishnaswamy Avenue,
Mylapore, Chennai-4.
Now at MF-7, CIPET Hostel Road,
Thiruvika Industrial Estate,
Ekkatuthangal,
Chennai 600 032. ... Appellant

vs.

1. Customs, Excise & Service Tax Appellate Tribunal,
   1st Floor, Shastri Bhavan Annexe,
   Haddows Road, Nungambakkam,
   Chennai 600 006.

2. The Commissioner of Central Excise,
   II Commissionerate,
   MHU Complex, 692 Anna Salai,
   Nandanam, Chennai 600 035. ... Respondents

Civil Miscellaneous Appeal against the Final Order No.40367 of 2014 dated 4.7.2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai Bench against the order of the Commissioner of Central Excise Chennai-II, Nandanam, Chennai-35 dated 30.3.2001 and made in C.No.V/15/24/97-C.Ex.Adj. and Order-in-Original No.13/2001

For appellant : Mr.M.Karthikeyan

For R2 : Mr.A.P.Srinivas

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

The above appeal, filed by an Importer under section 35G of the Central Excise Act, was admitted on 14.11.2014, on the following questions of law:-

> "1. Whether Tribunal is correct in holding that the penalty under Rule 209A of the Central Excise Rules, 1944 can be imposed on a juristic person, which requires the person to deal with the goods, with the knowledge that they are liable for confiscation under the Central Excise Law, by disregarding the binding judgment of the Larger Bench of the Tribunal?
>
> 2. Whether the Tribunal is correct in upholding the penalty imposed on the appellant under Rule 209A, though the petitioner has not dealt with any goods, which are held to be liable for confiscation and the raw materials supplied by them are not liable for confiscation at all under Central Excise Act/Rules, which is the requirement for imposing penalty under Rule 209A?
>
> 3. Whether the Tribunal is correct in not considering the plea of the appellant that in view of the order of settlement passed against the main noticee, by the Settlement Commission, granting various immunities, including immunity from confiscation and penalties, the penal proceedings against the appellant shall also abate, as held by a Larger Bench of the Tribunal?"

2. Heard Mr.M.Karthikeyan, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Standing Counsel appearing for the second respondent/Department.

3. The appellant imported scrap into India and sold it locally. One of the companies which purchased the scrap from the appellant was by name Chamak Holdings Limited. They are engaged in the manufacture of MS angles MS bars, MS Channels, etc. It appears that there was an investigation undertaken against the said Chamak Holdings Limited by the Director of Anti-Evasion. It was found during the investigation that the said Company manufactured finished products and sold it in the open market without raising invoices, thereby evading duty of excise.

4. Therefore, a demand of excise duty was made on the said Company. The proceedings initiated against the said Company ultimately got concluded in a settlement between the Department and the said Company. Under the terms of the settlement, the Company paid duty liability to the extent of Rs.10,69,833/-. The penalty and prosecution were waived by the Settlement Commission.

5. Further, a show cause notice dated 20.3.1998 was issued against the appellant who was only an importer, on the ground that there was a violation of Rule 209A of the Central Excise Rules, 1944. This show cause notice resulted in an order in original No.13/2001 dated 30.3.2001 by which a penalty of Rs.10,00,000/- was imposed upon the appellant. The said order was confirmed by the Commissioner (Appeals) and thereafter by the CESTAT by order dated 4.7.2014. It is against these orders that the appellant is before us.

6. At the outset, we do not know what was the violation committed by the appellant and how Rule 209A of the Central Excise Rules is attracted in the case on hand. Admittedly, the appellant was an importer. Admittedly, he cleared the goods after payment of duty of excise.

7. Rule 209A reads as follows:-

> "209A. Penalty for certain offences - Any person, who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods, which he knows or has reason to believe are liable to confiscation under the Act or these Rules, shall be liable to a penalty not exceeding the duty on such goods or ten thousand rupees, whichever is greater."

8. Rule 209A imposes three requirements to be satisfied before a penalty could be imposed. Those requirements are (1) that the person concerned should have acquired possession of or in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing or in any other manner dealing with the goods; (2) that such goods must be excisable goods and (3) that he must have knowledge or reason to believe that those goods are liable to be confiscated under the Central Excise Act or the rules.

9. Let us assume for the sake of argument that the first requirement is satisfied by the appellant in this case, but, by no stretch of imagination can it be stated that the second and third requirement stood satisfied.

10. At the hands of the appellant, the goods were not excisable goods. The appellant is only an importer. Even according to the show cause notice or the orders of the authorities, the appellant is not engaged in any manufacturing activity. The goods did not become excisable goods at the hands of the appellant. It is only at the hands of the Company Chamak Holdings Limited, that the goods became excisable goods due to the manufacturing activity undertaken by that company. Therefore, the second requirement is not satisfied.

11. The third requirement is also not satisfied since the goods were not liable for confiscation at the hands of the appellant. The appellant is not alleged to have defaulted in payment of customs duty or evaded the payment of excise duty or alleged to have cleared the goods out of the port clandestinely. Therefore, so long as the goods remained with him, they are not liable for confiscation. They would have become liable for confiscation after the purchaser manufactured the finished goods and sold them without invoices, thereby escaping payment of duty of excise. Therefore, the third limb of the rule is also not satisfied. Hence, the order of the authorities are unsustainable. Therefore, the appeal is allowed. The questions of law are answered in favour of the appellant. No costs. The connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. Customs, Excise & Service Tax
   Appellate Tribunal,
   1st Floor, Shastri Bhavan Annexe,
   Haddows Road, Nungambakkam,
   Chennai 600 006.

2. The Commissioner of Central Excise,
   II Commissionerate,
   MHU Complex, 692 Anna Salai,
   Nandanam, Chennai 600 035.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.10844
+1cc to Mr.S.Jaikumar, Advocate, S.R.No.10522

C.M.A.No.2903 of 2014

jsv[co]

srg(01/04/2016)