IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2016

C O R A M

THE HON'BLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Civil Miscellaneous Appeal No.3171 of 2009

Shri.V.Dhanapal,
Proprietor
M/s.Gold Soap Company,
6-1-125, C.Ammanayakanur,
Kodai Road 624 206. ... Appellant

Vs

1. The Customs Excise and Service Tax Appellate Tribunal,
26 Haddows Road, Sastri Bhavan,
Chennai 600 006.

2. The Commissioner of Central Excise,
Central Revenue Building, Bibikulam,
Madurai 625 002. ... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1994, against the Final Order No.1302 of 2009 dated 16.9.2009 on the file of the CESTAT, Chennai.

For Appellant : Ms.Cynduja Krishnan
For R2 : Mr.T.Pramod Kumar Chopda

J U D G M E N T

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

This appeal is filed by the assessee challenging the final order dated 16.9.2009, passed by the Customs Excise & Service Tax Appellate Tribunal (CESTAT) confirming the demand of penalty under Rule 209A of the Central Excise Rules 1944.

2. Pursuant to investigation, an order in original was passed on 23.10.1997, invoking section 11A of the Central Excise Act, 1944 (the 'Act'). The order levied a penalty of Rs.1.75 lakhs on one V.Dhanapal, the proprietor of M/s.Gold Soap Company in terms of Section 209A of the Central Excise Rules as well as penalty of Rs.5000/- each on his sales agents for clandestine purchases of raw material in fictitious and benami names without

bills and use of the same in the manufacture of detergent cakes. Statements had been recorded from the sales agents, who admitted the fact of clandestine purchases.

3. The order-in-original was the subject matter of appeal before the CESTAT which, vide order dated 22.5.2002, dismissed the appeals of the sales agents and remanded the appeal of the Proprietor to the file of the original authority for the purpose of computation of duty and grant of Modvat credit and re-fixation of appropriate penalty amount. Pursuant to the remand by the CESTAT, an order was passed on 31.12.2007, confirming the demand of duty and reducing the penalty to a sum of Rs.1,00,000/- as against Rs.1.75 lakhs imposed in the order in original dated 23.10.1997. The order dated 31.12.2007 stood confirmed in appeal by the CESTAT vide order dated 16.9.2009 against which order the present appeal is filed.

4. Before the CESTAT, the main contention of the assessee was that there was no finding to the effect that Dhanapal had possession of the goods with knowledge or belief that the goods were liable to confiscation, which is a mandatory requirement of Rule 209A of the Central Excise Rules.

5. This plea, however, is not liable to be accepted in full for the reason that the entity concerned is a Proprietorship and the transactions in question cannot be said to be outside the domain of knowledge of the sole proprietor. Further, the statements recorded from Dhanapal establish that he was aware of the clandestine purchases. Having admitted the same, he cannot now take a stand to the contrary. We also note that the 13 sales agents have suffered a fine of Rs.5000/- each, which stands confirmed by the CESTAT.

6. Taking into account the specific facts and circumstances of the case as above, we deem it proper to confirm the levy of penalty, however reducing the quantum to Rs.50,000/- from Rs.1,00,000/-. The appeal is disposed of in the above terms. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Customs Excise and Service
   Tax Appellate Tribunal,
   26 Haddows Road, Sastri Bhavan,
   Chennai 600 006.

2. The Commissioner of Central Excise,
   Central Revenue Building, Bibikulam,
   Madurai 625 002.

+1cc to Mr.T. Pramod Kumar Chopda, Advocate, S.R.No.73242
+1cc to Mr.S. Muthuvenkataraman, Advocate, S.R.No.73812

skv(CO)
md(08/02/2017)

C.M.A.No.3171 of 2009