BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.(MD)No.1559 of 2011

N.Chittaranjan : Appellant

Vs.

1.The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
26-Haddows Road,
Chennai-600 006.

2.The Commissioner of Central Excise,
Bibikulam,
Madurai-625 002. : Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 35G of Central Excise Act, 1944, against the final order No.1132/11, dated 07.10.2011 in A.No.E/431/2011.

For Appellant : Mr.S.Renganathan
For Respondents : Mr.R.Nandakumar
for Mr.S.Gurumoorthy

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JUDGMENT

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(Judgment of the Court was delivered by **M.SATHYANARAYANAN, J.**)

The appellant is one of the partners of M/s.Shri Jayamuruga Paper Mart, Sivakasi and aggrieved by the impugned order dated 07.10.2011 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, had filed this appeal and it was admitted on the following substantial question of law:

"Whether the Appellate Tribunal was justified in sustaining the penalty on the partner and partnership Firm simultaneously under Central Excise Act, 1944?"

2. A perusal of the materials placed before this Court would reveal that based on the intelligence gathered by the Officers of HPU, Madurai, that M/s.Paragon Paper Private Limited, 543/2, Perumal Goundanpatti, B.Ammapatty, Theni District (In short "PPPL") are selling the Duplex Boards to the safety matches

manufacturers situated in and around Sivakasi, Sattur and Kovilpatti, through M/s.Shri Jaya Muruga Paper Mart, Sivakasi, (In short "SJPM"), in which, the appellant is one of the partners, at undervalued price, and are receiving amount in excess of invoices raised through SJPM, which are not accounted to evade payment of central excise duty, the above said Officers had visited the residence of Sri.K.Seenivasan at Sivakasi-husband of one of the partners of SJPM, viz., Smt.Amsa as well as Office premises of SJPM at various places in Sivakasi and Factory premises of PPPL on 22.01.2009 for scrutiny of documents and records and on the basis of investigation carried out, Officers had seized certain incriminating documents and also recorded the statements of Shri.K.Seenivasan, husband of Smt.Amsa, one of the partners of SJPM, Accountant of SJPM, appellant and one of the Directors of PPPL as well as the Collection Agent of PPPL and it was found that 80 pages note books, which were seized at the residence of Shri.K.Seenivasan and at the Office premises of SJPM, contain receipts details written by Shri.K.Rajendran of PPPL and the said fact was admitted by the appellant herein, vide his statement dated 06.05.2009 as well as other persons. Total receipts available from the 80 pages note books for the period from March, 2005 to December, 2008, work out to Rs.3,18,96,521/-. Accordingly, a show cause notice was issued on 01.04.2010, calling upon the PPPL to show cause as to why an amount of Rs.3,76,086/- (Rupees Three Lakhs and Seventy Six Thousand and Eighty Six only), being the Central Excise Duties payable on differential value of exciseable goods not properly accounted, should not be demanded under proviso to Section 11A(1) of the Central Excise Act, 1944, an amount of Rs.3,74,372/- already paid by them should not be appropriated towards the proposed demand, charging of interest under Section 11AB of the Act and penalty under Section 11AC of the Central Excise Act, 1944 and Rule 25 of the Central Excise Rules, 2002. Show cause notice was also issued to Thiru.R.Rajkumar, Director of PPPL, SJPM, the appellant herein, as well as K.Seenivasan, husband of one of the partners and after elucidating their response and giving opportunity of personal hearing, the Assistant Commissioner of Central Excise, Dindigul II Division, Dindigul, had passed the order-in-original dated 22.11.2010, giving a finding that M/s.PPPL had shown lesser price in the invoices issued to the customers while supplying goods and collected amount over and above the invoice prices to evade payment of central excise duty and in so far as imposition of penalty on SJPM, Trader of PPPL, and also against the partners of SJPM, viz., the appellant as well as the husband of one of the partners, the said authority had taken into consideration the statement given that they have paid excess amount to PPPL than what was covered by the bill and they had knowledge that PPPL have suppressed the value of paper. Hence, there are evidences to show that SJPM and the individuals had the knowledge about the evasion of duty of PPPL. Therefore, the said authority has passed the following order:

"ORDER

(i) I confirm the duty amount of Rs.3,76,086/- (Rupees Three Lakhs Seventy Six Thousands and Eighty Six only) (CENVAT- Rs.3,61,240/- + Edu Cess - Rs.7,335/- + SHE Cess - Rs.2,031 + Paper Cess - Rs.5,480) on M/s.Paragon Paper Private Limited under sub section (2) of Section 11A of Central Excise Act 1944. I adjust an amount of Rs.3,76,086/- (Rupees Three Lakhs Seventy Six Thousands and Eighty Six only) already paid by them on 24.02.2010, 27.03.2010, 23.04.2010 and 21.06.2010 towards the said duty liability.

(ii) I impose penalty of Rs.3,76,086/- (Rupees Three Lakhs Seventy Six Thousands and Eighty Six only) on M/s.Parago Paper Private Limited, under Section 11AC of Central Excise Act 1944. However, they may exercise the option for payment of reduced penalty subject to the fulfillment of the condition stipulated therein.

(iii) M/s.Paragon Paper Private Limited is also liable to pay interest as applicable under Section 11AB of Central Excise Act 1944. I adjust an amount of Rs.1,40,617/- (Rupees One Lakhs Forty Thousands Six Hundred and Seventeen only) already paid by them on 30.06.2010 towards the interest liability.

(iv) I impose penalty of Rs.1,00,000/- (Rupees One Lakhs only) on Shri.R.Rajkumar, Director of M/s.Paragon Paper Private Limited under Rule 26 of Central Excise Rules 2002.

(v) I impose penalty of Rs.1,00,000/- (Rupees One Lakhs only) on M/s.Shri Jaya Muruga Paper Mart, Sivakasi under Rule 26 of Central Excise Rules 2002.

(vi) I impose penalty of Rs.1,00,000/- (Rupees One Lakhs only) on Shri N.Chittaranjan, Partner of Shri Jaya Muruga Paper Mart, Sivakasi under Rule 26 of Central Excise Rules 2002.

(vii) I impose penalty of Rs.1,00,000/- (Rupees One Lakhs only) on Shri K.Seenivasan, (H/O Smt.Amsa, Partner of Shri Jaya Muruga Paper Mart, Sivakasi), under Rule 26 of Central Excise Rules 2002.

(viii) The other penal proceedings initiated in the notice are hereby dropped."

3. SJPM, the appellant herein, K.Seenivasan, husband of one of the partners as well as Shri.R.Rajkumar, Director of PPPL, aggrieved by the order-in-original passed by the said authority, filed Appeal Nos.12 to 15 of 2011 before the Commissioner of Central Excise (Appeals), Madurai-2 and vide order dated 25.05.2011, the appellate authority has reduced the penalty from Rs.1,00,000/- to Rs.50,000/- and modified the impugned order as stated below:

"ORDER

The impugned Order-in-Original is modified as under

(a) Demand of duty of Rs.3,76,086/- on M/s.Paragon Paper Private Limited under Sub section (2) of Section 11A of Central Excise Act 1944 and adjustment the same amount already paid towards the demand is upheld.

(b) Imposition of penalty of Rs.3,76,086/- on M/s.Paragon Paper Private Limited under Section 11AC ibid and the provision option for payment of reduced penalty subject to the fulfillment of the conditions stipulated therein is upheld.

(c) Demand of appropriate interest under Section 11AB ibid and also adjustment of amount of Rs.1,40,617/- already paid towards the interest is upheld.

(d) The penalty Rs.1,00,000/- imposed on Shri R.Rajkumar, Director of M/s.Paragon Paper Limited under Rule 26 of Central Excise Rules 2002 is reduced to Rs.50,000/-.

(e) The penalty Rs.1,00,000/- imposed on M/s.Shri Jaya Muruga Paper Mart, Sivakasi under Rule 26 of Central Excise Rules 2002 is reduced to Rs.50,000/-.

(f) The penalty Rs.1,00,000/- imposed on Shri N.Chittaranjan, Partner of M/s.Shri Jaya Muruga Paper Mart, Sivakasi under Rule 26 of Central Excise Rules 2002 is reduced to Rs.50,000/-.

(g) The penalty of Rs.1,00,000/- imposed on Shri K.Seenivasan (H/o.Smt.Amsa, Partner of M/s.Shri Jaya Muruga Paper Mart, Sivakasi) under Rule 26 of Central Excise Rules is reduced to Rs.50,000/-.

(h) Stay petitions also stand disposed accordingly."

4. The appellant herein, aggrieved by the order passed by the appellate authority, filed further appeal before the CESTAT and contended among other things that he is only a partner in a Trading Firm viz. SJPM, who have been imposed with penalty for the offence by PPPL and he did not stand to gain anything out of this deal. Further, Sri.R.Rajkumar, Director of PPPL has also been imposed with penalty. The primordial ground raised by the appellant herein before the CESTAT was that when penalty was imposed on the partnership Firm, trading in the exciseable goods, no penalty can be imposed on the partners and, therefore, prays for setting aside the order passed by the appellate authority.

5. The CESTAT has taken up the appeal for final hearing and passed the final order, which is impugned in this Civil Miscellaneous Appeal and the perusal of the said order would disclose that the learned counsel appearing for the appellant canvassed only on the quantum of penalty modified by the appellate authority and taking into consideration of the said fact, the Tribunal reduced the penalty imposed on each of the four appellants, which include the appellant herein before the Tribunal, to Rs.25,000/-. The learned counsel appearing for the appellant would contend that since neither the Firm nor the partners stand to gain anything out of the said transaction and that one of the Directors of M/s.PPPL has also been imposed with penalty and further that the partnership Firm itself has been imposed with penalty, no penalty can be imposed on the partners separately and prays for interference.

6. Per contra, the learned Standing Counsel appearing for the respondents has drawn the attention of this Court to 2011(272) E.L.T. 513 (Bom.) (DB) [Textoplast Industries vs. Additional Commissioner of Customs] and 2016 (335) E.L.T. 225 (Bom.) (FB) [Amritlakshmi Machine Works vs. Commr. of Cus.(Import), Mumbai and would submit that as per the ratio laid down in the above cited decisions, simultaneous penalty can be imposed both on the partners and partnership Firm under Section 112 (a) of the Customs Act where the charge on the Firm is of acting or omitting to act rendering the goods liable for confiscation and the notice issued to the partner makes out a separate case of abetment on his part and the said abetment should be in respect of the act and/or the omission to act on the part of the Firm which has rendered the goods liable for confiscation under Section 111 of the Customs Act or where the allegation on the Firm is of abetment and/or mens rea, then Sections 135(1)(a) and 140 of the said Act are applicable and simultaneous penalty is imposable. It is submitted by the learned Standing counsel appearing for the respondents that in the original order, reasons have been assigned as to the imposition of penalty and it appears from the order passed by the appellate authority as well as by the CESTAT that the only argument advanced was as to the quantum of penalty and as such, it is not open to the appellant herein to make his submission on the merits of the matter and prays for dismissal of this appeal.

7. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

8. The question of law raised in this appeal has already been answered in the above cited two judgments rendered by a Division Bench as well as Full Bench of Bombay High Court. In 2011(272) E.L.T. 513 (Bom.) (DB), it has been held that for the purpose of imposing penalty, the adjudicating authority under Customs Act, 1962 may in an appropriate case impose a penalty both upon a partnership Firm as well as on the partners and whether the facts and circumstances of a case warrant imposition of penalty both on the Firm and its partners should be decided on the facts of each case. A perusal of the order-in-original dated 22.11.2010 would indicate that the factual finding has been recorded as to the evasion of law and after giving fair and reasonable opportunity to the concerned parties only, imposition of penalty was done. As rightly pointed out by the learned Standing Counsel appearing for the respondents, what was canvassed before the appellate authority as well as the CESTAT was only with regard to the quantum of penalty and taking note of the said submission, it has been reduced.

9. In the considered opinion of the Court, in the light of the above cited judgments, penalty on the partner as well as the partnership Firm can be simultaneously imposed and of course, imposition of penalty both on the Firm and its partners, depends

upon the facts of each case.

10. Therefore, the substantial question of law is answered in favour of the respondents. Therefore, the Civil Miscellaneous Appeal is dismissed, confirming the order passed in Final Order No.1132/11, dated 07.10.2011 in A.No.E/431/2011. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
26-Haddows Road,
Chennai-600 006.

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

+1 CC to M/s.S.GURUMOORTHY, Advocate, SR No. 79178

SML
PSM/PN/10.02.2017/6P/4C

Judgment made in
C.M.A.(MD)No.1559 of 2011
Dated: 02.12.2016
(1/2)