THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

THE HON'BLE SMT JUSTICE ANIS

W.P.M.P.No.20808 of 2016 in W.P.No.7685 of 2012
and
WRIT PETITION No. 3570 of 2016

COMMON ORDER: ***(Per VRS,J)***

The petitioner is a manufacturer of Fine Chemicals (Intermediate Drugs) falling under Chapter-29 of the Central Excise Tariff Act, 1985. The petitioner holds a central excise registration.

2. The petitioner received two orders from a Company in Pune, for the supply of certain chemicals. The Company, which issued the purchase orders, is said to be a manufacturer and exporter, holding an Advance Authorization, for duty free import of inputs.

3. After placing the purchase orders upon the petitioner, the ordering Company applied for invalidation of their own Advance Authorization, to enable the petitioner to apply for Advance Intermediate Authorization. They were granted by the Regional Joint Director General of Foreign Trade.

4. Based upon the said order, the petitioner applied for Advance Intermediate Authorization to the Joint Director of Foreign Trade for the import of inputs required for the manufacture of the products, for which they bagged orders. An Advance Authorization was also issued by the Foreign Trade Development Officer, for a CIF value of Rs.3,97,58,150/-, with a condition that the petitioner should execute 100% bank guarantee to customs authorities for covering the exemption from customs duty.

5. However, subsequently, the condition of 100% bank guarantee was deleted by an amendment to the Advance Authorization.

6. The petitioner, pursuant to the Advance Authorization, manufactured the intermediate products and supplied them to the ordering Company, which was found to be in the Domestic Tariff Area. But, since the ordering Company was entitled to import the intermediate goods duty free, for the manufacture of final products intended for export, the petitioner cleared the goods without payment of central excise.

7. However, the Superintendent of Central Excise issued a letter, dated 21.05.2009, calling upon the

petitioner to submit the notification, under which the intermediate goods were cleared without payment of duty, along with the copies of invoices and other documents. After the petitioner submitted them, a show-cause-notice, dated 18.06.2009 was issued, proposing to demand excise duty in respect of clearances of intermediate goods, on the ground that the export obligation did not stand fulfilled.

8. After the petitioner submitted a reply, an order in original,
dated 25.02.2010, was passed confirming the demand of Rs.99,42,590/- and imposing a penalty of Rs.10 lakhs.

9. As against the said order, the petitioner filed a statutory appeal before the CESTAT. The appeal was filed along with an application for stay and waiver of duty demand. On the Excise Stay Application No.624 of 2010, the CESTAT passed an order, dated 08.08.2011, directing the petitioner to deposit 50% of the duty demanded within six weeks and report compliance on 03.10.2011. Subject to such deposit, the pre-deposit was waived.

10. Unfortunately, the petitioner failed to comply with the

said condition. As a consequence, the Tribunal passed a final order,

dated 21.11.2011, dismissing the appeal for want of compliance with the condition prescribed under Section 35F of the Central Excise Act.

11. As against the said final order, dated 21.11.2011, the petitioner came up with a writ petition in W.P.No.7685 of 2012. This writ petition was dismissed for non-prosecution, on 05.11.2013. Therefore, the petitioner in W.P.No.7685 of 2012 has come up with two applications, one for restoration (yet to be numbered) and another in W.P.M.P.No.20808 of 2016 for condoning the delay of 745 days in seeking restoration.

12. In the meantime, the Department issued a garnishee order on 10.12.2015 to the Banks, in which the petitioner holds accounts. Challenging the said garnishee order, the petitioner has come up with the next writ petition, W.P.No.3570 of 2016.

13. Heard Mr. V. Gopalakrishna Gokhalay, learned senior counsel appearing on behalf of Mr. S. Ganesh, learned counsel for the petitioner, and the learned special standing counsel for Central Excise and Customs

appearing for the respondents.

14. In the affidavit in support of the application for condonation of delay, the Managing Director of the petitioner Company has stated that he was arrested by the Directorate General of Revenue Intelligence on 04.04.2013 for alleged offences under the NDPS Act, 1984, and that he was granted bail only after one year on 11.04.2014. Finally, he was acquitted by the Sessions Court in S.C.No.491 of 2013, dated 06.07.2015. Therefore, the case of the petitioner is that when the writ petition, W.P.No.7685 of 2012, was listed for final hearing, he was in judicial custody as an under-trial prisoner and that, therefore, he could not prosecute the writ petition.

15. Though the petitioner may have a valid reason for not prosecuting the writ petition up to 11.04.2014 or at least up to the date of his acquittal, namely, 06.07.2015, there was no reason as to why he could not come up with a petition for restoration until 27.01.2016. The affidavit is completely silent about his inaction from the date of his acquittal, namely, 06.07.2015, until 27.01.2016 the date on which he filed the restoration application.

16. As a matter of fact, the restoration application was filed, only after the garnishee order was issued on

10.12.2015. Until then, the petitioner appears to have gone into a slumber.

17. In any case, the writ petition, W.P.No.7685 of 2012, does not appear to advance the cause of the petitioner. As we have pointed out earlier, a conditional order was passed by CESTAT on 08.08.2011. The conditional order was not complied with. Therefore, the appeal was dismissed on 21.11.2011 for non-compliance with the provisions of Section 35F. The order passed on 21.11.2011 was an automatic corollary of the failure of the petitioner to comply with the conditional order, dated 08.08.2011. The conditional order, dated 08.08.2011, is not under challenge. It has attained finality. Therefore, there is no way, the final order, dated 21.11.2011, can be interfered with, even while retaining the conditional order, dated 08.08.2011. Therefore, there is no point in restoring W.P.No.7685 of 2012, as no relief can be granted to the petitioner in the said writ petition. Hence, W.P.M.P.No.20808 of 2016 is dismissed.

18. Coming to the garnishee order, the main grievance of the petitioner is that the respondents did not follow the procedure prescribed by Section 110A of the Customs Act, for the provisional release of the goods. According to

the petitioner, several representations were made, but they fell into deaf ears. The grievance of the petitioner is that if the respondents had either allowed the provisional release of the goods or put the goods to auction at the appropriate time, the petitioner would have at least offered the value of those goods, towards the duty imposed. The further contention of the petitioner is that having appropriated the valuable goods of the petitioner and reduced them to nothing, it is unfair on the part of the Department to demand a pound of flesh from the petitioner.

19. Though the above argument appears to be attractive at first blush, the same cannot be accepted for the reason that the petitioner should have first complied with the conditions imposed under the Advance Authorization. It is only a person, who does equity, can claim equity. Today, the demand has attained finality. Once a demand has attained finality, there can be no challenge to the method of recovery, unless the method of recovery itself is not, in accordance with the procedure prescribed. We do not find any procedural infirmity in the method of recovery now resorted to, by the respondents. Therefore, the second writ petition, W.P.No.3570 of 2016, is also devoid of merits and, hence, the same is

dismissed.

Consequently, miscellaneous petitions if any pending in W.P.No.3570 of 2016 shall stand dismissed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

ANIS, J.

3rd August, 2016
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