

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Central Excise Appeal No.8 of 2010 (O&M)

Date of Decision: August 10, 2016

M/s Avdesh Tracks Pvt. Ltd.

...Appellant

Versus

Union of India and another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.Amrinder Singh, Advocate
for the appellant.

Mr.Amit Goyal, Advocate
for the respondents.

RAJESH BINDAL, J.

The assessee is in appeal against the common order No.457/2009-EX[DB] dated 3.7.2009 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short `the Tribunal') in Excise Appeal No.6067 of 2004.

The appeal was admitted on 17.5.2010 for consideration of the following substantial question of law:-

“Whether the order passed by the Tribunal in imposing the penalty is correct in law when there is a bona fide belief when Section 3-A read with Section 96ZP3(ii) of the Central Excise Rules were ultra vires?”

Brief facts, as mentioned in the Memo of Appeal are that the appellant is manufacturer of M.S.Bars, Shape and Section falling in heading 7214.90-7216.10 of the Schedule to the Central Excise Tariff Act. The appellant opted to pay duty under the compounded levy scheme in terms of Section 3A of the Central Excise Act, 1944 (for short `the Act'), which was

added w.e.f. 14.5.1997. The duty was payable on the annual capacity of production by the appellant. For the period from April, 1998 to September, 1998, the Adjudicating Authority vide its order dated 30.8.2004 (Annexure A-1) held the appellant liable to pay Excise Duty of ₹ 6,43,050/- along with interest under Rule 96ZP(3)(i) of the Central Excise Rules, 1944 (for short 'the Rules') and equal amount of penalty was also levied under Rule 96ZP(3)(ii) of the Rules.

Vide another order dated 14.9.2014 (Annexure A-2) for alleged default in payment of duty from October, 1998 to March, 1999, the Adjudicating Authority levied interest on the outstanding amount of duty liability under Rule 96ZP(3)(i) of the Rules and penalty of ₹ 4,53,050/- under Rule 96ZP(3)(ii) of the Rules.

Aggrieved against the aforesaid orders, the appellant preferred appeals before the Commissioner (Appeals), Customs & Central Excise. The Appellate Authority vide order dated 14.10.2004 (Annexure A-3) set aside the levy of interest and penalty on the appellant.

Aggrieved against the order passed by the first Appellate Authority, the Department preferred single appeal before the Tribunal, which was allowed vide impugned order dated 3.7.2009 (Annexure P-5).

Learned counsel for the appellant submitted that the vires of provisions of Rule 96ZP were under challenge before Hon'ble the Supreme Court in **Shree Bhagwati Steel Rolling Mills vs. Commr. Of Central Excise, 2015(326) E.L.T.209 (S.C.)**, wherein, Hon'ble the Supreme Court had declared the provisions pertaining to interest and penalty as contained in 96ZO, ZP and ZQ of the Rules, as invalid.

The submission is that once the provisions, under which the interest and penalty were levied against the appellant, have been struck down by Hon'ble the Supreme Court, the impugned order deserves to be set aside.

On the other hand, learned counsel for the respondents while not disputing the judgment of Hon'ble the Supreme Court, submitted that as there was default by the appellant in payment of duty, liberty be given to initiate fresh proceedings against it to levy interest and penalty.

After hearing learned counsel for the parties and considering the judgment of Hon'ble the Supreme Court in *Shree Bhagwati Steel Rolling Mills's case (supra)*, wherein, the provisions of Rules 96ZO, ZP and ZQ of the Rules have been held to be ultra vires with reference to levy of interest and penalty only, in our view, interest and penalty levied on the appellant under the aforesaid provisions, cannot be sustained.

For the reasons recorded above, the appeal is allowed. The substantial question of law, as referred to above, is answered in favour of the assessee and against the Department.

(RAJESH BINDAL)
JUDGE

August 10, 2016

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(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned : Yes/ No

Whether reportable : Yes/ No