

\$~46, 47, 50 to 54, 64 & 68 to 71

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10.07.2018

+ CEAC 23/2018 & CM APPL. 26747-26748/2018

SINGHAL UDYOG Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

+ CEAC 24/2018 & CM APPL. 26753-26754/2018

M/S ASHISH GUPTA Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

+ CEAC 25/2018 & CM APPL. 26788-26789/2018

GAGANDEEP STEELS Appellant

versus

ADDITIONAL COMMISSIONER OF CENTRAL EXCISE,
DELHI-1 Respondent

+ CEAC 26/2018 & CM APPL. 26790-26791/2018

HARI RAM BABU LAL Appellant

versus

ADDITIONAL COMMISSIONER OF CENTRAL EXCISE,
DELHI-I Respondent

- + CEAC 27/2018 & CM APPL. 26797-26798/2018
- VINAYAK INDUSTRIES Appellant
- versus
- ADDITIONAL COMMISSIONER OF CENTRAL EXCISE,
DELHI-1 Respondent
- + CEAC 28/2018 & CM APPL. 26799-26800/2018
- ABHISHEK INDUSTRIES Appellant
- versus
- DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-I
..... Respondent
- + CEAC 29/2018 & CM APPL. 26802-26803/2018
- RAJPUT STEELS Appellant
- versus
- ADDITIONAL COMMISSIONER OF CENTRAL EXCISE,
DELHI-I Respondent
- + CEAC 30/2018 & CM APPL. 26866-26867/2018
- VIJAY ENTERPRISES Appellant
- versus
- DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent
- + CEAC 19/2018 & CM APPL. 26530-26531/2018
- SOURABH INDUSTRIES Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

+ CEAC 20/2018 & CM APPL. 26532-26533/2018

ZONARK TIE MAF. CO. Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

+ CEAC 21/2018 & CM APPL. 26534-26535/2018

ASHISH INDUSTRIES Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

+ CEAC 22/2018 & CM APPL. 26559-26560/2018

R.N. GUPTA & CO. Appellant

versus

DEPUTY COMMISSIONER OF CENTRAL EXCISE, DELHI-1
..... Respondent

Present: Mr. Rajesh Rawal, Adv. for appellants.
Mr. Harpreet Singh, Sr. Standing Counsel for
respondent in Item Nos.46, 52, 53 & 70.
Mr. Sanjeev Narula, Sr. Standing Counsel for CBIC
with Mr. Abhishek Ghai, Adv. for respondents in Item

Nos.47, 51, 68 & 69.

Mr. Amit Bansal with Mr. Akhil Kulshrestha, Advs.
for respondents in Item Nos.50, 54, 64, 70 & 71.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE P.S. TEJI

S. RAVINDRA BHAT, J. (ORAL)

1. The question of law urged in these appeals under Section 35G of the Central Excise Act, 1944 by the assessee/appellants is with respect to the tenability of invocation of the extended period of limitation, enacted by the proviso to Section 11 of the Central Excise Act. The appellants urge that having regard to the totality of facts and circumstances, the findings arrived at by the Adjudicating and Appellate Authority, and later affirmed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), are wholly erroneous.

2. All the appellants manufacture stainless steel strips which are excisable. According to the plea, they claim to have availed the facility of a compounding scheme and deposited the excise duty leviable in accordance with the provisions of the Act and Notifications, in terms of the required form (Appendix II). All the appellants, have their own units located in Wazirpur Industrial Area. The Commissioner of Central Excise, by identically phrased show-cause notices issued in March 2009, called upon the assessee to show cause as to why duty and appropriate penalty ought not to be levied on the allegations that the compounding

scheme and the benefit of lower duty was availed without depositing the amounts. The show-cause notice alleged that contrary to the assessee's claims, the documents relied upon by them – principally in the form of the duly stamped bank receipts evidencing payment of the bank amounts, were forged. The assessee replied arguing that they were victims of a fraud and not its perpetrators, since the amounts appear to have been misappropriated even though paid by them. It is not disputed that the amounts were not debited from the assessee's bank accounts; rather, they claim that these amounts were periodically deposited in cash with the bank. The Adjudicatory Authority - and later the Appellate Authority rendered concurrent findings of fact rejecting the assessee's explanations and confirming the duty payable for the extended period. In addition, penalty was imposed. In these circumstances, the assessee approached the CESTAT which vide the impugned order rejected all their appeals through a common order.

3. It is argued on behalf of the assessee that the invocation of the extended period in the given facts and circumstances of the case was patently erroneous. Learned counsel emphasized that there is no positive finding rendered by any of the authorities below which says that the assessee were parties to the fraud. It was submitted that in the absence of such a finding, the invocation of the extended period which is premised upon short levy or short payment, on grounds of "fraud or collusion or any wilful representation or suppression of facts", necessarily means that

there ought to be an active participation by the individual, against whom such notice is issued. It is claimed that the assessee's consistent case or rather plea was that the First Information Report (FIR) was in fact, lodged by them upon immediately becoming aware that the amounts were not deposited with the bank. Given these facts and the pendency of criminal investigation, it could not be urged much less found that they were perpetrators of the fraud justifying the invocation of an extended period. Learned counsel relied upon the authority of the Punjab and Haryana High Court decision in *Commissioner of Customs, Amritsar v. Vallabh Design Products* 2007 (219) E.L.T. 73 (P&H). It is evident from a facial analysis that the Commissioner, Customs, being the Adjudicatory Authority, had concluded that the assessee in that case was not party to the fraud but rather was a subsequent purchaser of the forged instrument (DEPB licence). Learned counsel also relied upon *Pee Jay International v. Commissioner of Customs* 2016 (340) E.L.T. 625 (P&H). The Revenue relies upon the Supreme Court decision in *Commissioner of Customs (Preventive) v. Aafloat Textiles (I) Pvt. Ltd.* 2009 (235) E.L.T. 587 (S.C.) and the Punjab and Haryana High Court in *Golden Tools International v. Joint DGFT, Ludhiana* 2006 (199) E.L.T. 213 (P&H) which was apparently affirmed in *Golden Tools International v. Joint DGFT, Ludhiana* 2013 (293) E.L.T. A57 (SC) by the Supreme Court. It was urged that the appellants were given every opportunity to establish that they were innocent parties but made no attempt to present acceptable evidence.

4. This Court is of the opinion that the concurrent findings of fact rendered in this case, were in order, given the circumstances which appear on the record. All the appellants stated in their defence that they had tasked one or the other individual to deposit the duty amounts with the concerned bank periodically. The least that could have been done by them in these circumstances, was to establish through some credible material i.e. by summoning the bank records or citing the concerned individuals as witnesses and ensuring that their statements were recorded. The assessee however, chose to baldly assert that they were victims of fraud and that the First Information Report was in fact lodged against a certain individual, one Sachin, against whom investigations are ongoing.

5. The judgment in *Aafloat* (supra) states that if one takes advantage of a set of circumstances which turns out to be based upon fraud, he or it has to suffer the consequences. The Court then was dealing with a situation of importation of gold under forged Special Import License (SIL). The decision is contrary to the Punjab and Haryana High Court judgment in *Vallabh Design Products* (supra) (which the appellants rely upon). Consequently, the Supreme Court decision has to prevail. Even otherwise, there is no denial of the fact that the appellants availed of and sought to take advantage of the fraudulent documents, which they pleaded to be genuine, even though the amounts in fact were never deposited. The reliance on *Pee Jay International* (supra) by the appellant's counsel is insubstantial. The broad manner of construing the ratio

in *Aafloat* (supra) necessarily is that one who takes advantage of fraudulent act has to suffer the consequences. We, therefore, do not agree with the view of the Punjab and Haryana High Court.

Having regard to these facts, the invocation of the extended period was justified. There is no error in the findings of the lower authorities. The appeals are consequently dismissed.

S. RAVINDRA BHAT, J

P.S. TEJI, J

JULY 10, 2018

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