IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 61 OF 2019
WITH
NOTICE OF MOTION NO. 432 OF 2019
IN
CENTRAL EXCISE APPEAL NO. 61 OF 2019

Dnyaneshwar V. More Sakhar Karkhana Ltd. .. Appellant

v/s.

The Commissioner of Central Excise .. Respondent

Mr.A.S. Rao for the appellant
Mr. Karan Adik for the respondent

CORAM : M.S. SANKLECHA &
M.S. SONAK, J.J.

DATED : 18th JUNE, 2019

P.C.

1. This appeal under Section 35G of the Central Excise Act, 1944 (Act) challenges the order dated 5th June, 2018 passed by the Customs, Excise and Service Tax Appellate Tribunal (Tribunal).

2. The appellant has urged the following questions of law for our consideration :-

(a) Whether in the facts and circumstances of the case and in law, the Tribunal is justified in holding that extended period of limitation for issuing the show-cause notice under Section 11A(1)

of the Act is available to the department?

(b) Whether in the facts and circumstances of the case and in law, the Tribunal is justified in denying the benefit of the CENVAT when the appellant has accepted the demand?

3. The appellant is engaged in manufacture of excisable goods namely jaggery and jaggery powder, falling under Chapter XVII of the first schedule of the Central Excise Tariff Act, 1985. During the period 2012-13 to 2014-15, the appellant manufactured excisable goods i.e. jaggery and jaggery powder and cleared the same for home consumption without payment of excise duty. On the basis of intelligence received by the Department, the factory of the appellant was visited and it was found that the appellant had not complied with the Central Excise law and procedure nor paid any excise duty on the removal of excisable goods.

4. The above investigation led to show-cause notice dated 14th December, 2016 seeking to recover excise duty of Rs.27.57 lakhs with interest and penalty. The show-cause notice was confirmed by an order dated 13th April, 2017 of the Assistant Commissioner of Central Excise and equivalent penalty under Section 11AC was also imposed upon the appellant.

5. Being aggrieved with the order dated 13th April, 2017, the appellant filed an appeal to the Commissioner of Excise (Appeal). However, the same was dismissed.

6. On further appeal, the Tribunal dismissed the appellant's appeal after recording the fact that the appellant does not dispute the payment of duty and interest but only seeks waiver of penalty imposed upon the appellant. The appellant in support of its case for non-imposition of penalty submitted that non-compliance with the Central Excise procedure and non-payment of duty on clearance of jaggery and jaggery powder for home consumption, was only because of ignorance of the excise procedure as the main person in the appellant was a farmer. This submission was not accepted by the Tribunal on the ground that for a period of 3 years, the appellant had not paid duty and pleading ignorance of law, cannot be a defense for non-compliance of the excise procedure and non-payment of duty.

7. Mr. Rao, learned Counsel appearing in support of the appeal submits that person in charge of the appellant is a farmer and was not aware of excise procedures. In fact, he submitted that even if the

respondents would have paid the duty and taken credit for the duty paid on the inputs and capital goods received by it, the Cenvat credit would be available to it for use to discharge the duty payable on jaggery and jaggery powder. Thus, in these circumstances, it is submitted that the extended period could not be invoked and consequently penalty under Section 11AC should also be dropped.

8. We note that the finding on facts as found by the Tribunal the appellant has not paid excise duty on the goods cleared for home consumption for the period of 3 years nor followed any excise procedures. The non-payment of excise duty and not following of excise procedures came to light only because of intelligence received by the Revenue and subsequent visit to the respondent's factory. It is to be noted that the appellant has not disputed duty liability and interest. Thus, the occasion to consider the issue of demand being barred by time does not arise. So far as penalty is concerned, the plea of ignorance of law is the only defense / submission for non imposition of penalty. The appellant is a limited company and is in the business of manufacturing of jaggery and jaggery powder. The plea of ignorance of law cannot be accepted as stated in the well known maxim "Ignorantia Juris Non Excusct" i.e. ignorance of law is no excuse. This

for the reason not because all men know the law but because it could then be an excuse every man would use / plead and it would be impossible to refute it. Moreover, there is no material to support the plea. In these circumstances, the view taken by the Tribunal in the present facts, cannot be said to be perverse and / or arbitrary warranting interference of this Court. Thus, the questions proposed in these facts, do not give rise to any substantial question of law.

9. Accordingly, the appeal is dismissed.

10. In view of the dismissal of the appeal, Notice of Motion also does not survive and is dismissed as infructuous.

(M.S. SONAK, J.) **(M.S. SANKLECHA, J.)**