IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A. No.2499 of 2019

M/s.Velvelite International Pharma Product
No.23, Ambedkar Road, Kodambakkam
Chennai 600 024. ...Appellant

-Vs-

Commissioner of GST & CCE
Chennai (South) Commissionerate
No.692, Anna Salai, MHU Complex
Nandanam, Chennai – 600 035. ...Respondent

Prayer : Civil Miscellaneous Appeal under Section 35Gof the Central Excise Act, against the Final Order No.43094 of 2018 dated 14.12.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.K.Jayachandran

For Respondents: Mr.V.Sundareswaran, Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI, J.)

The assessee M/s.Velvette International Pharma Product, Chennai has approached this Court by way of the present C.M.A., against the order of the learned CESTAT dated 14.12.2018, whereby the learned Tribunal held that the show cause notice given to the assessee was within the extended limitation under Section 11A(1) of the Act, for the following reasons.

> "7.5. Viewed in the background of the aforesaid order dated 19.10.2011 of the Hon'ble High Court, we are unable to fathom how learned Consultant, during the course of hearing, has contended that the relevant date should be attributable to 22.10.1990, on which date Rule 173B declaration had been accepted by the department. This is not certainly

within the scope of the remand directions of the Hon'ble High court. On a perusal of the said letter dated 20.10.1990 endorsing the said acknowledgement dated 22.10.1990 is only a letter of the appellants dated 20.10.1990 informing that their Herbal Cough Syrup "Nivaran 90" is being classified as Ayurvedic Medicine, and also giving the list of ingredients for its manufacture. It is very obvious that the said letter has been acknowleded by the concerned Supterintendent of the department in good faith, however that by itself cannot coat the said declaration with the stamp of finality or infallibility. In fact, the very averments made in the said declaration have been found incorrect and misstated which by itself is a recognized raison d'etre for invoking extended period of limitation. This is what has been done in the impugned SCN. The attempt by Ld.consultant to take us on a journey not contemplated by the order of the Hon'ble High Court not only fails but has been found incorrect.

7.6. The SCN has also alleged that the appellants had misdeclared the process of manufacture and formula of the product, suppressed from the department the use of non-ayurvedic ingredients which was other than declared, with intention to evade payment of duty and hence have invoked extending time limit of five years as provided in proviso to sub-section(1) of Section 11A of the then Central Excise and Salt Act, 1994.

7.7. Viewed in this context, the period of demand namely 1.5.1991 to 28.2.1994 is well within the extended period of limitation invoked under proviso to sub-section (1) of Section 11A ibid, with respect to the date of SCN, namely 17.5.1996. We therefore hold that in the facts and circumstances of the case, the date of inspection by the officers on 11.11.93 will not have any bearing in deciding the period of limitation to issue SCN dt 17.5.96.

7.8. The appellants have also objected to the issue of supplementary SCN dt 15.7.96 which, according to them, has substantially changed the SCN originally issued, hence the date of issue of SCN should be taken as the date of issue of the supplementary SCN. On any analysis of this contention, we find that whereas SCN dated 17.5.96 had only proposed demand of central excise duty, the supplementary SCN proposed that on similar grounds contained in the said SCN, "Special Excise Duty of Rs.6,29,868/- is also liable to be paid for the period 1.5.91 to 28.2.94 again invoking the extended period of limitation under Section 11A (1) ibid. The supplementary SCN has not changed the quantum of excise duty, demanded in the earlier SCN dt 17.5.96, but has only sought to propose demand another duty of excise, namely, Special Excise Duty, which may have been inadvertently omitted to have been included in the first SCN. In any case, for the very reason that date of inspection 11.11.93 cannot be taken as the date of department having acquired knowledge of the activities of the appellant, the demand proposed in the supplementary SCN dt 25.7.96 is also found to be well within the extended period of limitation invoked therein.

8. For these reasons, we are unable to find any merit in the arguments put forth by the Ld.Consultant for the appellant. The date of inspection of 11.11.93 will not have any bearing in deciding the period of limitation to issue SCN dt.17.5.96 and the supplementary SCN dt 25.7.96. In consequence, we do not find any reason to deviate from the findings of the Tribunal in the earlier order dt 4.5.2010 that the demand is not time-barred and the charge of suppression has been rightly held to have been proved by the authorities below. In the result the appeal is dismissed.

9.The limited issue at Sl.No.(1) of the remand order dated 19.10.2011 by the Hon'ble High Court of Madras in C.M.A.No.2759 of 2010 dt.19.10.2011 is therefore considered and disposed of on the above terms."

2. Learned counsel for the assessee urged before us that the said order was passed by the learned Tribunal on 14.12.2018, in pursuance of the remand order made by this Court on 19.10.2011 in the earlier C.M.A., filed by the assessee in C.M.A.No.2759 of 2010 (M/s.Velvette International Pharma Products Ltd., vs CESTAT and another), in which this Court had

directed the Tribunal to decide the question of suppression and the question of extended limitation under the Act once again. But, the learned Tribunal, in the impugned order, has not even dealt with the said issue and therefore, the same is liable to be quashed by this Court, in the present appeal. Learned counsel for the assessee also pointed out that on two of the issues, the assessee has taken the matter before the Honourable Supreme Court in Civil Appeal No.10379 of 2012, which was admitted by the Honourable Supreme Court on 03.09.2012, and the same is still pending before the Honourable Supreme Court.

3. Mr.V.Sundareswaran, learned Standing Counsel for the revenue supports the impugned order and submits that the appeal is not maintainable.

4. Having heard the learned counsel appearing on either side, we are satisfied that the learned Tribunal has met with the remand directions of this Court, and since the Tribunal has given cogent reasons for invoking the extended limitation in the first, and second, the issue of alleged misdeclaration of the herbal cough syryup "Nivaran-90', whether it was an ayurvedic medicine or not, the assessee can raise all possible objections with regard to the extended limitation before the concerned authority and it is left open to the authority to decide the issues in accordance with law. If the assessee feels aggrieved by the decision of the authority, they can avail appropriate remedy available to them in terms of the Act. Therefore, we are of the considered opinion that the appeal is devoid of merits and it is liable to be dismissed. Accordingly, the appeal fails and it is dismissed. No costs.
Kst

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Commissioner of GST & CCE
Chennai (South) Commissionerate
No.692, Anna Salai, MHU Complex
Nandanam, Chennai - 600 035.

+1cc to Mr.V.Sundareswaran, Advocate, SR.No.45493

C.M.A.No.2499 of 2019

Kak(02/08/2019)