Pradnya Bhogale

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

CENTRAL EXCISE APPEAL NO. 198 OF 2019

The Commissioner of CGST and Central Excise
Bhiwandi Commissionerate ..Appellant
vs.
Capacite Infrastructure Ltd.
(Formerly Known as M/s. Pratibha Pipes
& Structural Ltd.) ..Respondent

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Mr. M. Dwivedi for the Appellant.

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CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 11 FEBRUARY 2020

P.C.:-

This Appeal is filed by framing the following questions of law for consideration of this Court :-

"a. Whether the CESTAT is justified in holding that demand cannot be sustained for the extended period of limitation and should be restricted to the normal period of limitation ?

b. Whether CESTAT is justified in holding that there is no justification for imposition of penalty when the issue involved is an interpretation of law and there is no suppression of fact, without going into the merits of the case ?"

2. The facts giving rise to this Appeal briefly stated are that an audit was conducted in respect of the Respondent. It is the case of the Appellant that the Respondent had availed of a benefit of an exemption Notification No.47 of 2002 dated 6 September 2002 as amended and Notification No.6 of 2006 dated 1 March 2006. It was the case of the Appellant that the Respondent had availed of the benefit in respect of pipe fittings when the benefit of exemption was available only for 'pipes' and not for 'pipe fittings'.

3. A show cause notice was issued to the Respondent for recovery of the duty amounting to Rs.11,70,61,514/- along with interest and penalty. On adjudication the Commissioner dropped the demand of Rs.6,25,26,885/- and confirmed the duty demand of Rs.5,45,34,629/- with interest and imposed penalty of Rs.4,92,53,719/-.

4. The Respondent filed an Appeal before the Customs, Excise and Service Tax Appellate Tribunal, Mumbai along with an application for stay. The Tribunal came to the conclusion that exemption was admissible only to 'pipes' and not to 'pipe fittings', however held against the Appellant on the ground that the proceedings were initiated beyond the period of limitation and the benefit of extended period of limitation under Section 11A of the Central Excise Act, 1944, was not available. The Tribunal held that there was no suppression of facts by the Respondent.

5. Aggrieved thereby the Appellant has filed the present Appeal. It is an admitted position that the demand has been made beyond the normal period of limitation and is sought to be fitted in the extended period of limitation under Section 11A. It is the contention of the learned counsel for the Appellant that the contingency under Section 11A of the Central Excise Act, 1944 namely the suppression of facts arises in the present case and therefore, the period of limitation stood extended. Learned counsel for the Appellant contended that even though the Respondent was not entitled to the benefit of exemption of pipe fittings, he has taken the same which clearly means that there is suppression of facts.

6. The Tribunal has dealt with this submission. The Tribunal has found that throughout it's returns the Respondent has clearly mentioned the benefit was availed on the pipe fittings and also in the invoices which were on record. We have not been shown any embargo on the Appellant to examine these returns and invoices before the audit took place. We had granted time to the Counsel for the Appellant to demonstrate this position. If in these facts the Tribunal took a view that this is not a case of suppression of facts, the view taken cannot be stated to be perverse. Merely because another view is possible, is not a ground to interfere. The question of law as framed, in the present case

does not give rise to any substantial question of law to entertain this Appeal.

7. The Appeal is accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**