IN THE HIGH COURT OF ORISSA AT CUTTACK

CEREF No. 4 of 2003

M/s. Macborn Industries, Chauliaganj, Cuttack .... ***Appellant***

Mr. B.K.Mahanti, Senior Advocate
Mr. Adhiraj Mohanty, Advocate

-versus-

Commissioner of Central Excise, Bhubaneswar-I .... ***Respondent***

Mr. A.P. Das, Advocate

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S.K. PANIGRAHI

ORDER
26.07.2022

Order No.

06. 1. The present reference case under the Central Excise Act, 1944 arises from an order dated 11th December, 2002 of the Customs, Excise & Gold (Control), Appellate Tribunal, Calcutta (CEGAT) disposing of three appeals of which the present Appellant's appeal is one against the order dated 20th July, 2001 of the Commissioner of Central Excise, Bhubaneswar and remanding the matter to the Commissioner for a fresh decision in the light of the impugned order of the CEGAT.

2. Before the CEGAT one of the issues raised by the present Appellant was that the show cause notice was sent to the different Units on the basis that they were under a common command and control of Sri Indramani Sahu and family members and they had suppressed their actual production and made clearances of goods

evading payment of excise duty for the periods in question i.e. 1988-89 to 1990-91. It appears that on the above basis the production figures of all the units were clubbed together and they were treated as one combined concern although there was enough material to show that, they operated independently. The second issue was regarding limitation.

3. In the impugned order after discussing the instructions and orders issued by the Ministry of Law, Justice and Company Affairs as well as the Trade Notices issued, the CEGAT concluded as under:

> "In this view, since are no common partners in the firms Maniraj, Macborn and Hindustan and there is material on record that they are different firms, Hindustan being a proprietary concern, the production of these three concerns cannot be clubbed, on the grounds as arrived at by the Ld. Commissioner. We therefore set aside this order of clubbing which is not as per the binding order under Section 37B. Clubbing of clearances under Notfn. No.175/86-CE, therefore cannot be upheld."

4. Even as regards limitation, the finding was in favour of the Appellant in the following terms:

> "(c) Since there was an order of Deputy Commissioner (now Joint Commissioner) in the same circumstances, we find that the appellants have a strong case in their favour on the grounds of limitation. No plea has been taken before us or evidence placed aced as regards this order having been taken in appeal by the Commissioner. This order, therefore, is final, is binding on the Revenue as far as the issue of clubbing is concerned. No further facts have been determined except erratic payment of 4% for delivery van charges, in the proceedings before us. The very fact that payment

> for vans have been effected at 4%, as claimed, therefore, even if they were erratic as found by the evidence produced before the Commissioner, the fact of defraying the cost of van used for transportation, after clearance is established. There is no finding whether this erratic payment is not totaling upto 4% of the total cost or a share. We therefore, find a strong case in favour of the appellants on the grounds of limitations as regards the clubbing of clearance."

5. If indeed on both the issues i.e. the issue of clubbing as well as on limitation, the finding was in fact in favour of the Appellant, there was no occasion for the CEGAT to remit the matter to the Commissioner for a fresh adjudication "for re-determining clandestine clearance, if any". Once it was held that the entire exercise is barred by limitation in terms of proviso to Section 11-A of the CE Act, it was needless for the CEGAT to have remanded the matter for a fresh adjudication. Consequently, the impugned order of the CEGAT to the extent that it remands the matter for a fresh adjudication is hereby set aside.

6. The reference petition is disposed of. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(Dr. S.K. Panigrahi)
Judge

S.K. Jena/Secy.