OD-19

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
<u>ORIGINAL SIDE</u>

CEXA/4/2024
IA NO: GA/2/2024

COMMISSIONER OF CENTRAL EXCISE BOLPUR
VS
M/S JAI BALAJI INDUSTRIES LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 24TH APRIL, 2024.

<u>Appearance :</u>
Mr. S. S. Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
....for appellant
Mr. A. K. Prasad, Adv.
Ms. Swapna Das, Adv.
...for respondent

The Court :- This appeal filed under section 35G of the Central Excise Act, 1944 is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata in Excise Appeal No.552 of 2011 arising out of order in original no.19 dated 18.3.2011. The revenue has suggested the following questions of law for consideration.

"a. Whether in the facts and circumstances of the case the Learned Tribunal is right and justified in holding that there were revenue neutrality and if it was, then are the statutory provisions of law to be ignored on that ground ?

b. Whether in the facts and circumstances of the case the Learned Tribunal is right in allowing the appeal of the respondent/assessee and holding that interest is not payable by the assessee on the differential duty paid by them under the supplementary invoices raised?”

We have elaborately heard learned advocates on either sides.

On a perusal of the impugned order one could easily be mislead as a batch of appeals have been disposed of by the learned tribunal and the revenue is aggrieved by only one order passed by the learned tribunal not concerning Excise Appeal no.552 of 2011. Therefore, we have to filter necessary facts which are relevant to the concerned appeal and then take a decision. The learned Tribunal for the appellant revenue made elaborate submissions and has also relied upon the decisions of the Hon’ble Supreme Court in Steel Authority of India Limited Vs. Commissioner of Central Excise Raipur, 2019 (366) ELT 769 (SC). The decision of the case of the Hon’ble Supreme court in Commissioner of Central Excise, Pune *Versus* SKF India Ltd., 2009 (239) E.L.T. 385 (S.C.) and the decision in the case of Commissioner of Central Excise *Versus* International Auto Ltd. , 2010 (250)E.L.T. 3(S.C.) and Commissioner of Central Excise *Versus* Jayashree Cables & Conductors Pvt. Ltd., 2016 (332) E.L.T. 583 (Mad.).

Before we consider as to whether these decisions are applicable to the case the factual position has to be gone into which has been threadbare analysis of the learned Tribunal and the findings has been recorded. The contention of the respondent/assessee before the Tribunal was that they were clearing the goods to independent buyers at factory gate and also selling the goods to their sister concern for captive consumption and, therefore, the goods which were sold for transfer to their sister concern for captive consumption could be as such at the same value at which the goods were sold to independent buyers are assessed. Therefore, it was contended that no duty was payable by the assessee and the question of payment of interest on such additional duty does not arise. Further, the assessee contended that although they have paid duty upon the insistence of the department, if it is assumed that change in practice of valuation of stock transfer was adopted by the assessee on their own valuation, the assessee cannot be compelled to accept the situation which was legally incorrect. Further it was contended that department cannot compel the assessee to perpetuate the illegality and in such circumstances the whole exercise was revenue neutral. Therefore, the assessee is not liable to pay interest. The submissions which were made by the department were also bound by the learned Tribunal. In paragraph 12 of the impugned order the learned Tribunal has considered the facts of the case on hand namely the case relating to Excise Appeal 552 of 2011 and it has been pointed out that question would be whether the assessee was liable to pay the duty or not in a case where they are selling goods to independent buyers as well as to their sister units. The learned Tribunal rightly took note of Rule 4 of the Central Excise Rule 2000 and held that differential duty was not payable in so far as respondent is concerned in this appeal. Therefore, the substantial question which arose therefrom was whether interest was payable by the assessee or not. In this regard, the learned Tribunal has referred to the decision in the case of C.C.E. & C., Vadodara-II *Versus* Gujarat Narmada Fertilizers Co. Ltd., 2012 (285) ELT 336 (Guj.) and after noting the said decision the appeal filed by the assessee was allowed. To be noted that the decision in Gujarat Narmada Fertilizers (supra) was appealed against and the Hon'ble Supreme Court has dismissed the appeal in CC 1174 of 2012 by order dated 20.07.2012. In the case of Gujarat Narmada Fertilizers(supra) the Court held that accepting the stand of the department that even in such a case once the payment of duty was made interest liability would follow would bring about an incongruent situation. In the case of duty which was time barred if the manufacturer does not pay voluntarily, it would not be possible for the department to recover it. But if he does it voluntarily despite complete period of limitation, he would further be saddled with interest liability to pay statutory interest and this was not intention of the Legislature while sub Section (2B) was introduced in Section 11A of the Act. Thus we find that the reasoning given by the learned Tribunal to be fully justified so far as the decision relied on by the learned standing Counsel for appellant, we find the same are factually different as in all those cases the undisputed fact being the differential duty was payable which is not the case before us, and cannot be adjudicated to the facts and circumstances to the case on hand.

Therefore, the appeal is dismissed.

The connected application also stands closed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.