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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-01-2026

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE P. DHANABAL

CMA No. 3435 of 2009

and M.P.No.1 of 2009

M/s Modern Engineering
& Plastics Pvt Ltd., A/2, SIDCO Industrial Estate,
Mettur Dam 636 403, Salem District.

..Appellant(s)

Vs

1. Customs, Excise And Service
Tax Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexe, 1st Floor, 26, Haddows
Road, Chennai- 600 006.
2. Commissioner Of Customs
And Central Excise (Appeals), No.1, Williams
Road, Cantonment, Tiruchirapalli.
3. Joint Commisisoner of Central Excise,
6/7, ATD Street, Race Course Road, Coimbatore-
18.

..Respondent(s)

Prayer: Appeal filed under Section 35G of Central Excise Act, 1944 against
the final Order No.E/575/2009 dated 18.05.2009 on the file of Hon'ble
Customs, Excise and Service Tax Appellate Tribunal, Chennai.



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For Appellant(s): Mr.S.Murugappan

For Respondent(s): R1 - Tribunal
Ms.Revathi Manivannan
Senior Standing Counsel (for R2 and R3)

Judgment

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

This appeal has been filed by the assessee challenging order dated 18.05.2009 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai (in short 'Cestat'/'Tribunal').

2. The questions raised for adjudication relates solely to the non-consideration of the aspect of limitation by the Tribunal and read thus:

'(1) Whether the 1st respondent is right in rejecting the legal plea regarding department's knowledge and time bar by holding that this plea was not raised before the lower authorities?

(2) Whether the 1st respondent is right in rejecting the above plea by holding that the same was not raised even in the appeal filed before it, but only during the hearings?'

3. The appellant is engaged in the activity of fabrication. In respect of the period 1995-96, a Show Cause Notice (SCN) dated 29.03.2000 was issued alleging that the appellant, Modern Engineering & Plastics Pvt. Ltd. (MEPP) had floated two shadow units in the names of Modern Fabricators and Engineers



(MFE) and Engineering Plastics Incorporation (EPI) during the years 1995-96 and 1996-97 and had cleared goods in the names of the shadow units solely to avail Small Scale Industry (SSI) exemption and with the intention of evading payment of excise duty on clearances in excess of the threshold of Rs.30.00 lakhs.

4. The Assessing Authority thus proposed to club the clearances in the names of the appellant, MFE and EPI, in which case, the quantum would be far in excess of the threshold for exemption and bring the same to tax. Levy of penalty was also proposed.

5. Before the Assessing Authority, the appellant only contested the matter on merits and no plea in regard to the invocation of extended period of limitation under Section 11A of the Central Excise Act, 1944 (in short 'Act'), was raised. The assessment came to be completed by an order-in-original dated 28.03.2001 confirming the proposals under the show cause notice. Even before the Assessing Authority/Joint Commissioner, no plea was raised for invocation of extended period of limitation under Section 11A of the Act.

6. A first appeal was filed before the Commissioner (Appeals) who confirmed the order of adjudication vide order dated 31.05.2002. Even in first appeal, no plea relating to limitation was raised.



7. A second appeal was filed before the Cestat before whom also, no ground of limitation was taken. Hence, the Cestat proceeded solely on the merits of the matter. Suppression has been specifically noted and confirmed by the Tribunal, and this would support the invocation of larger period of limitation. The Cestat notes that the manufacturing activity of all three units was conducted in the premises of the appellant company and that there were no other premises where MFE, and EPI could have carried out manufacturing, as there was neither factory nor machinery available with MFE and EPI.

8. Hence, the claim of MFE and EPI that they were independent units having plant and machinery of their own to enable them to carry out manufacturing activities, came to be established as a farce and the findings of the lower authorities that both were only sister concerns of the appellant which was floated to split the clearances and avail exemption, came to be confirmed.

9. Since no ground was taken on the plea of limitation, the oral plea raised was rejected as being a new argument that had not been raised at any point in time, either at the stage of reply to show cause notice or at any stage thereafter, and hence was not considered by the Tribunal. The appeal was dismissed, and it is in the aforesaid circumstances that the questions of law as extracted at paragraph 2 supra have been raised for our consideration.



10. We have heard Mr.S.Murugappan, learned counsel for the appellant and Ms.Revathi Manivannan, learned Senior Standing counsel for the Central Excise Department.

11. Both learned counsel would reiterate the facts and findings in the orders of the authorities as narrated by us in the paragraphs supra.

12. Normally, limitation, if it were to be a pure question of law may be raised at any stage of the proceeding, and it would not have been fatal for either the Tribunal or even this Court, at the stage of appeal on a substantial question of law, to consider the question of limitation for the first time. The only caveat is that all necessary facts to determine that question are available on record. In the present case, the necessary facts, to determine as to whether invocation of larger period of limitation is correct or otherwise, are unavailable.

13. Section 11A deals with recovery of duties not levied or not paid or short-levied or short-paid or erroneously refunded. The period of limitation provided for such recovery is one year from the relevant date, being the date of short levy/non-levy. However, in cases where the Revenue is able to establish the ingredients of a) fraud, b) collusion, c) wilful misstatement, d) suppression of facts or e) contravention of any of the provisions of this Act or of the rules made thereunder with intent to evade payment of duty, the Department has in its



arsenal, an extended period of 5 years of limitation from the relevant date, to serve a notice for assessment.

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14. It is the case of the assessee that since manufacturing activities have been carried out in the appellant unit and exemption from Duty had been by MFE for the previous years, the Department was well aware of the existence of MFE. The ingredients of Section 11A(4), that provides for a larger limitation, had not been established.

15. A compilation of 34 documents including registration certificates and returns filed under the Income Tax Act have been placed before us. We are unaware as to whether any of these documents have been produced before the authorities as there is no certification to the effect that these documents form part of the records.

16. Be that as it may, we find from those records that relevant form has been filed by MFE before the Assistant Collector of Central Excise, Salem Division, Salem-7 on 26.04.1991 claiming exemption as an SSI unit for the period 1990-91. However, as far as EPI is concerned, there is only a registration certificate dated 03.02.1998 and nothing to indicate that EPI was in existence prior to its registration on the aforesaid date. Hence, we are unable to accept, as a fact, the position that the Department was well aware of the existence of EPI and its activities.



17. This becomes a very relevant question of fact, one which is critical to determine the question of limitation, in this case thus, a mixed question of law and fact. Thus, and in the absence of necessary facts, we find nothing untoward in the conclusion of the Tribunal rejecting the plea of limitation raised for the first time before it, particularly in the absence of any supporting material. We answer the substantial questions of law in favour of the Department and against the assessee.

18. This Civil Miscellaneous Appeal and the connected Miscellaneous Petition are dismissed. No costs.

(A.S.M.,J.) (P.D.B.,J.)

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Index: Yes
Speaking order
Neutral Citation: Yes
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DR.ANITA SUMANTH J.

AND

P.DHANABAL J.

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To

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Tax Appellate Tribunal, South Zonal Bench,
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