

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 18 of 2014 (O&M)

Date of Decision: 14.7.2014

Commissioner of Central Excise, Chandigarh-I

...Appellant

Versus

M/s Sawan Mal Shibu Mal Steel Rolling Mills, Mandi Gobindgarh

...Respondent.

**CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MR. JUSTICE JASPAL SINGH.**

PRESENT: Mr. Sunish Bindlish, Advocate for the appellant.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 7.6.2013 (Annexure A-3) passed by the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (hereinafter referred to as "the Tribunal") claiming the following substantial questions of law:-

- i. Whether under the compounded levy scheme, the provisions of erstwhile Rule 96(ZP) permitting imposition of penalty equal to the amount of duty for delay in payment of duty, without any discretion and without having regard to the extent and circumstances of delay in payment of duty, could be held to be ultravires of the Central Excise Act, 1944 and

the Constitution of India?

- ii. Whether mandatory penalty equal to amount of duty on the assessee in case of violation of the provisions of erstwhile Rule 96(ZP) of the Central Excise Rules, 1944 could be waived at the discretion of any authority having regard to the extent and circumstances of delay in payment of duty?
- iii. Whether provisions of Section 11A of the Central Excise Act, 1944 regarding limitation shall apply to the Compounded Levy Scheme, being a comprehensive scheme in itself with general provisions of Central Excise Act and Rules excluded?
- iv. Whether the provisions of Section 38A of the Central Excise Act, 1944 inserted by Section 131 of the Finance Act, 2001 (validation of action taken has been provided for by virtue of Section 132 of the Finance Act, 2001) shall be applicable in respect of obligation and liabilities incurred under Rules 96ZO and 96ZP of erstwhile Central Excise Rules 1944 before the same were omitted, notwithstanding the omission of Section 3A w.e.f. 11.05.2001?

2. The facts necessary for adjudication of the instant appeal as narrated therein may be noticed. The assessee was working under the Compounded Levy Scheme from September 1997 to March 2000 and

opted to discharge their liability under Rule 96ZP(3) of the Central Excise Rules, 1944 (for brevity "1944 Rules") read with Section 3A of the Act. As per 1944 Rules, where a manufacturer failed to pay the whole of the amount of duty payable for any month by the 10th day of such month, he would be liable to pay the outstanding amount of duty along with interest @ 18% per annum till the date of actual payment of outstanding amount and penalty equal to the amount of duty outstanding. During the course of scrutiny of RT-12 returns of the assessee, it was found that it had failed to discharge its liability of ₹ 1,66,407/- for the months from December, 1999 to March 2000 within the prescribed time limit. Accordingly, a show cause notice was issued to the assessee. The adjudicating authority vide order dated 26.2.2009 (Annexure A-1) imposed penalty of ₹ 1,66,407/- (i.e. equal amount of the duty liability) under Rule 96ZP(3) of the 1944 Rules read with Section 3A of the Act. Feeling aggrieved, the assessee filed an appeal before the Commissioner (Appeals) who vide order dated 22.3.2010 (Annexure A-2) set aside the imposition of penalty. Against the order dated 22.3.2010 (Annexure A-2), the revenue filed an appeal before the Tribunal. The Tribunal vide order dated 7.6.2013 (Annexure A-3) dismissed the appeal by relying upon the judgment of this Court in **CCE Chandigarh v. Hari Concast Limited, 2009 (242) ELT 12**. According to the appellant, the Special Leave Petition filed against the said judgment is pending in the Hon'ble Apex Court. Hence, the present appeal.

3. Learned counsel for the appellant relied upon judgment of the Apex Court in **Collector of Central Excise, Jaipur v. Raghuvar (India) Limited, 2000(118) ELT 311** to contend that the penalty in the present case had been validly imposed as it was levied within

reasonable time from the date when it came to the notice of the authority imposing the penalty.

4. After hearing learned counsel for the appellant, we do not find any merit in the aforesaid contention.

5. A Division Bench of this Court in **Commissioner of Central Excise, Chandigarh v. M/s Hari Concast (P) Limited, CEA No.35 of 2007**, decided on 20.4.2009, after relying upon judgment of the Apex Court in **State of Punjab v. Bhatinda District Cooperative Milk Producers Union Limited, (2007) 11 SCC 363** held as under:-

“It is conceded position that proceedings against the respondent-assessee for imposing penalty were initiated after the expiry of period of five years. Although there is no statutory period of limitation yet reasonable period of limitation for initiating proceedings is five years. In that regard reliance may be placed on the judgment of Hon'ble the Supreme Court in the case of **State of Punjab v. Bhatinda District Cooperative Milk Producers Union Limited, (2007) 11 SCC 363.**”

6. In so far as judgment in **Raghuvar (India) Limited's** case (supra) is concerned, therein also, the Apex Court held that any law or stipulation prescribing a period of limitation to do or not to do a thing after the expiry of period so stipulated has the consequence of creation and destruction of rights and, therefore, must be specifically enacted and prescribed therefor. It is not for the Courts to import any specific period of limitation by implication, where there is really none, though Courts may always hold when any such exercise of power had the effect of

disturbing rights of a citizen that it should be exercised within a reasonable period. The period of five years has been held to be reasonable period for initiating penalty proceedings. Thus, no advantage can be derived by the revenue from the aforesaid pronouncement.

7. In view of the above, the Tribunal had rightly upheld the order of Commissioner (Appeals) deleting the penalty on the ground that the proceedings for the same were initiated after 5 years from the relevant date. Accordingly, no substantial question of law arises. Thus, finding no merit in the appeal, the same is hereby dismissed.

(AJAY KUMAR MITTAL)
JUDGE

July 14, 2014
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(JASPAL SINGH)
JUDGE