

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6999-7000 OF 2003

M/S. SANJAY INDL. CORPN. & ANR.

...Appe

llants

VERSUS

COMMNR. OF CENTRAL EXCISE, MUMBAI

...Resp

ondent

WITH

CIVIL APPEAL NO. 7142 OF 2003

CIVIL APPEAL NO. 4530 OF 2006

O R D E R

These appeals raise common questions of law.

For the

sake of convenience, we shall be eliciting the facts from Civil Appeal Nos. 6999-7000 of 2003.

The appellant in this case is running a proprietorship concern which is engaged in the business of cutting larger steel plates into smaller size and shapes as required by the customers. The specification, size, etc., to w

hich the

larger size plates are to be cut into smaller sizes are provided by the customers, and the plates are also supplied by them to the appellant. After cutting the plates into smaller plates as per the specifications provided, the same are supplied back to the customers. It is a matter

of

record that the cutting operation is undertaken with the help of gas cutting machines, which process is known as profile cutting.

aforsaid

The appellant, under the belief that the

process does not amount to manufacture within the definition

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of Section 2(f) of the Central Excise Act, 1985 (hereinafter

Meenakshi Kohli

Date: 2015.04.22

17:20:47 IST

Reason:

referred to as 'Act' for short) did not get

himself

registered under the said Act and therefore, was not paying any excise duty on the said produce. After

this was

C.A. Nos. 6999-7000/2003 etc.

detected by the Department, a show cause notice dated

01.11.1996 was issued to the appellant covering the period from October, 1991 to September, 1996.

By the said notice,

the appellant was called upon to show cause as to why excise duty as well as the penalty etc., be not charged/ imposed on the aforesaid process carried out by the appellant during the said period as according to the Department it amounted to "manufacture". The appellant submitted his reply denying

the allegations contained therein.

From the reply, it becomes clear that two-fold defence was raised, first, that the process did not amount to manufacture within the definition of Section 2(f) of the Act and the second, that the show cause notice was barred by limitation as the notice could cover only a period of six months as provided under Section 11A of the Act at the relevant time. The appellant was given a hearing and thereafter Order-in-Original dated 11.07.1997 was passed by the Adjudicating Authority confirming the demand of duty raised in the show cause notice. Penalty was also imposed. The objection regarding limitation was rejected by the Adjudicating Authority taking shelter under provision so to Section 11A(1) of the Act holding that it was the case of the suppression and misrepresentation by the appellant and therefore, limitation period stood extended to five years, for initiating action against the appellant. The appellant preferred appeal against the said order before the Customs, Excise & Gold (Control) Appellate Tribunal, West Zonal Bench, Mumbai (hereinafter referred to as 'CEGAT'). However, even the said appeal has been dismissed by the CEGAT vide judgment dated 24.03.2003. Challenging that order, the present appeal is preferred. We may state at the outset that though Mr.V.Lakshmikumaran, learned counsel appearing for the appellant, initially made an endeavour to demonstrate that the process did not amount to "manufacture", he abandoned C.A. Nos. 6999-7000/2003 etc. 3

the said argument in the middle. His submission now is confined to the aspect of limitation and penalty which has been imposed. In this behalf, his plea was that the case of the appellant is not covered under the proviso to Section 11A(1) of the Act as there was no suppression or misrepresentation on the part of the appellant. In order to buttress this submission, the learned counsel referred to Order-in-Original dated 28.07.1998 passed by the Commissioner of Central Excise, Pune, in the case of M/s Pioneer Profile Inds., Pune. In that matter, which involved the same process and the excise duty was not paid, though the Commissioner held that duty was payable as it amounted to manufacturing process, at the same time, the Commissioner also specifically pointed out that the question as to whether the aforesaid process was manufacturing process and excisable under the Act was in doubt earlier. On that basis, in that case, the penalty was also not imposed. Relevant portion of the said order reads as under: -

"However, in computing the total short levy alleged against the unit, their turnover pertaining to mere second sales of M.S. sheets have to be excluded. Turnover pertaining to cutting of M.S. circles and rings and various size profiles will have to be reckoned for calculating their short levy liability. Further in view of the fact that the issue relating to excitability of the process of profile cutting itself was in doubt, even at the higher level of the Department it would not be proper

to invoke the extended period and clamp the levy of duty for the extended period. Therefore, in fairness the levy shall be restricted for the last six months only. In the circumstances, I do not impose any penalty on Shri Dilawar R. Shaikh under Rule 209A of the Central Excise Rules, 1944."

Reading the aforesaid extracted portion, it becomes abundantly clear that even as per the Department, there were certain doubts relating to excisability of the process of profile cutting.

In view thereof, if the appellant also had nurtured this belief that the process carried out by him does not C.A. Nos. 6999-7000/2003 etc. 4

amount to manufacture and did not pay the excise duty, we can safely infer that this conduct of the appellant was a bona fide conduct and cannot be treated as contumacious or willful suppression. Thus, we are of the opinion that on the facts of this case, proviso to Section 11A(1) of the Act would not be attracted. Once that is held, it is obvious that the period of limitation for serving show cause notice shall be six months. In the present case, the show cause notice covered the period from October, 1991, to September, 1996 and the show cause notice was given on 01.11.1996. In the said show cause notice when only a period of six months could be covered from the date of show cause notice, it will go back to period from May, 1996 onwards.

In

For the reasons given above and keeping in view the observations made in order dated 28.07.1998 passed by the office of Commissioner of Central Excise, Pune, in M/s Pioneer Profile Inds., Pune, the imposition of penalty upon the appellant is unwarranted.

These appeals are, accordingly, partly allowed. Show cause notice is quashed insofar as it relates to period from October, 1991, to April, 1996. Likewise, the penalty imposed upon the appellant also stands set aside. The duty, however, for the period from May, 1996 is hereby upheld along with interest payable thereon.

Civil Appeal No. 7142 of 2003 and Civil Appeal No. 4530 of 2006 are disposed of in terms of the order as aforesaid in Civil Appeal Nos. 6999-7000 of 2003.

....., J.  
[ A.K. SIKRI ]

....., J.  
[ ROHINTON FALI NARIMAN ]

New Delhi;  
March 10, 2015.

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ITEM NO.105 COURT NO.14 SECTION III

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Civil Appeal No(s). 6999-7000/2003

M/S. SANJAY INDL. CORPN. & ANR. Appellant(s)

VERSUS

COMMNR. OF CENTRAL EXCISE, MUMBAI Respondent(s)  
(with appln. (s) for ex-parte stay and office report)

WITH C.A. No. 7142/2003

(with appln. (s) for ex-parte stay)

C.A. No. 4530/2006

(with appln. (s) for ex-parte stay and office report)

Date : 10/03/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Parties                      Mr.     V. Lakshmikumaran, Adv.  
   Mr.     M. P. Devanath, Adv.  
   Mr.     Vivek Sharma, Adv.  
   Ms.     L. Charanaya, Adv.  
   Mr.     Aditya Bhattacharya, Adv.  
   Mr.     Prashanth S. Shivadass, Adv.  
   Mr.     Rajesh Kumar, Adv.

   Mr. M. P. Devanath, Adv.

   Mr.     Jaideep Gupta, Sr. Adv.  
   Mr.     Arijit Prasad, Adv.  
   Ms.     Shirin Khajuria, Adv.  
   Mr.     B. Krishna Prasad, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Civil        Appeal        Nos.    6999-7000    of    2003    are    partly  
allowed, and Civil Appeal No. 7142 of 2003 and Civil Appeal  
No. 4530 of 2006 are disposed of in terms of the order  
passed in Civil Appeal Nos. 6999-7000 of 2003 in terms of  
the signed order.

(Nidhi Ahuja)  
COURT MASTER

(Suman Jain)  
COURT MASTER

[Signed order is placed on the file.]