IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

172

E/17/2009, E/73/2009 & E/CO/27/2009

(Arising out of Order-in-Appeal No. 188 & 189/2008 CE (SLM) dated 18.12.2008 by the Commissioner of Central Excise, (Appeals), Salem)

CCE & ST, Salem : Appellant

Vs.

1. M/s. Pandian Tea Industries : Respondents
2. Shri G.R. Soundara Pandiaraj

Appearance

Shri K. Veerabhadra Reddy, JC (AR)
for the appellants

Shri M. Saravanan, Consultant,
for the Respondent.

CORAM :

Hon'ble Ms. Sulekha Beevi, Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **01.09.2017**

FINAL ORDER No. **42130-42131/2017**

Per Bench

The brief facts are that on gathering intelligence that the respondent manufactured black tea and cleared the same without payment of duty during the period April 2001 to February 2005 by wrongly availing exemption under Notification

No. 4/99-CE dated 26.11.99, 13/2003 dated 01.03.2003 and 43/2003 dated 14.05.2003, the officers of DGCEI visited the premises of the respondent. Several documents were recovered and statements were recorded. It was revealed that in order to be eligible for exemption the respondent had to file a certificate by the Village authorities establishing that at least 2/3rd of their tea leaves should be procured from small growers who cultivate tea in less than 10 hectares of land. The department on investigation in respect of agricultural IT returns filed by the tea growers found that such growers had more than 10 Hectares of land and therefore not qualified as small growers. That the respondents are therefore not eligible for exemption. A SCN was issued raising the above allegations and demanding duty along with interest and also for imposing penalties. The original authority after adjudication confirmed the demand, interest and imposed penalty besides separate penalty on Shri G.R. Soundrapandian, Managing Partner of the respondent. In appeal, the Commissioner (Appeals) set aside the demand on the ground of limitation. Hence the department is now before the Tribunal.

2. On behalf of the Department Ld. AR reiterated the grounds of appeal. He submitted that the Commissioner (Appeals) had relied upon the Final Order No. 639-640/2008 dated 01.07.2008 passed by the Tribunal in the case of *Havukkal Tea and Produce Company*. That the department had filed appeal before the

Hon'ble High Court of Madras against the said decision of the Tribunal. However, the Ld. AR conceded that the said appeal in CMA No. 3695 & 3696/2008 have been dismissed by the Hon'ble High Court by judgment dated 23.07.2010 reported in 2011 (267) ELT 162. On merits the Ld. AR submitted that the evidence unearthed during investigation revealed that the certificate/declaration by the village authority was not true and correct. That the individual tea cultivators were not small tea growers as they were not holding less than 10 hectares of land.

3. The Ld. Consultant Shri M. Saravanan submitted that the respondent in Appeal No. E/73/2009 has passed away and also produced the death certificate to establish the same. He argued that the respondent has a good case on merits as well as on the ground of limitation. On merits the Ld. Consultant submitted that the certificate issued by the village authorities was entirely based on true set of facts. The individual tea growers had only less than 10 hectares of land and in the agricultural IT returns/documents relied upon by the department the land which comprised of road, buildings, residences etc., was included besides the land in which the tea was cultivated. Thus the department has wrongly arrived at the conclusion that these tea growers are holding land above 10 Hectares and are not small tea growers. On limitation, the Commissioner (Appeals) has rightly set aside the demand. It is discussed by the Commissioner (Appeals) that for availing the exemption

necessary undertakings had been addressed to the AC of the concerned division during the relevant period in terms of the Notification No. 41/99 dated 26.11.99 that therefore it is clear that all facts were informed to the department. That there is no suppression of facts and therefore the Commissioner (Appeals) has rightly relied upon the decision of the Tribunal in the case of *Havukkal Tea and Produce Company* (supra) and set aside the demand.

4. Heard both sides.

5.1 It is submitted that the respondent in appeal No. E/73/2009 is no more. This appeal is dismissed as abated.

5.2 In appeal No. E/17/2009 the department has filed appeal against the order passed by the Commissioner (Appeals) who set aside the demand on the ground of limitation relied upon the decision of the Tribunal in the case of *Havukkal Tea and Produce Company* (supra). The main ground taken by the department is that the said decision has been appealed before the Hon'ble jurisdictional High Court. However as fairly conceded by the Ld. AR, Hon'ble High Court of Madras has dismissed the appeal thereby upholding the decision of the Tribunal. Following the same as well as taking not of the fact that the respondent had intimated all the details regarding the availment of Notification to the department in terms of Notification No. 41/99, we hold that the department has not been able to establish the

Customs, Excise & Service Tax Appellate Tribunal suppression of facts with intention to evade payment of duty. Therefore, the extended period is not invokable. The Commissioner (Appeals) has rightly set aside the demand on the ground of limitation. The impugned order calls for no interference. Appeal No. E/17/2009 is dismissed. The cross objections filed by the respondent is also disposed of accordingly.

(Operative portion of the order was pronounced in open court)

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

BB

Customs, Excise & Service Tax Appellate Tribunal

प्रमाणित प्रति / Certified True Copy
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI