

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1076/2009 - EX[DB]
E/S/1044/2009-EX

Date 29/09/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
M/S BHAWANI CASTINGS PVT. LTD.
G.T.ROAD (SIRHIND SIDE).
MANDI GOBINDGARH, DISTT. FATEHGARH SAHIB
(PB)
M/S BHAWANI CASTINGS PVT. LTD.

Appellant

Vs

Respondent

C.C.E. CHANDIGARH

STAY ORDER NO.965/2009-EX

2009 EX[DB] dated 12-8-09

I am directed to transmit herewith a certified copy of Final order No. 738/
passed by the Tribunal under Section 35-C(1) of Central Excises Act, 1944


Assistant Registrar
(Excise Appeal Branch)

Copy to :

1. Respondent

C.C.E. CHANDIGARH

C.R. BUILDING, PLOT NO. 19, SECTOR 17-C, CHANDIGARH 160017

2. Adv. / Consult

SH. VIKRANT KAKKARIA, ADV.,
KOTHI NO. 5, SECTOR-10, CHANDIGARH

3. C.D.R

4. ~~J.C.D.R.~~

5. Bar association, CESTAT, New Delhi

6. Director Publications, Customs, Excise. I.P. Estate, New Delhi

7. M/s Centax Publications Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3

8. Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar, Chennai - 17

9. Raghuraman's 44-B, Regal Flat, Shipra Suncity, Indirapuram - 201010, Ghaziabad, DT. U.P.

10. M/s Manupatra Information Solutions Pvt Ltd, Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)

11. M/s. Deeparchie Publications, M-93, Marg. 46, Saket, New Delhi 110017

12. Taxindiaonline.com Pvt.Ltd. B-XI/8183, Vasant Kuni, New Delhi - 110070

13. Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026

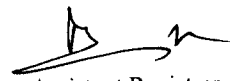
14. Easy Service Tax Online Dot Com Pvt.Ltd.407A, Iscon Mall, Above Star India Bazar, Satellite Road, Ahmedabad-15

15. LAWCRUX Advisors Pvt Ltd. LAW House.1-8, Sector - 10, Faridabad 121003 (Haryana)

16. Office Copy

17. Guard file

18. HON'BLE PRESIDENT.


Assistant Registrar
(Excise Appeal Branch)

**IN THE CUSTOMS, EXCISE AND SERVICE TAX
APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. 1**

**Excise Appeal No. 1076 /2009- Ex(BR)with
Excise Stay Application No. 1044/2009 Ex(BR)**

[Arising out of Order-in-Original No. 05/CE/Chd/ 2009 dated 3.2.2009
passed by Commissioner of Central Excise, Chandigarh]

For approval and signature:

Hon'ble Shri Justice R.M.S. Khandeparkar, President
Hon'ble Shri M. Veeraiyan, Member (Technical)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	Yes
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	Yes
3	Whether Their Lordships wish to see the fair copy of the Order?	Seen
4	Whether Order is to be circulated to the Departmental authorities?	✓

M/s. Bhawani Castings (P) Ltd.

Appellants

Vs.

Commissioner of Central Excise.
Chandigarh

Respondent

Appearance:

Shri Vikrant Kakkaria, Advocate for the Appellants
Shri K.P. Singh, DR for the Respondent

CORAM:

Hon'ble Mr. Justice R.M.S. Khandeparkar, President
Hon'ble Mr. M. Veeraiyan, Member (Technical)

Date of Hearing /decision: 12.08.2009

FINAL ORAL ORDER NO. 738/09-EX
STAY order no 965/09-EX
Per Justice R.M.S. Khandeparkar (for the Bench):

Heard at length the advocate for the appellants and learned DR. This appeal arises from order dated 3.2.09 passed by the Commissioner Chandigarh, whereby a penalty of Rs.1,06,91,835/- has been imposed in terms of proviso to Rule 96ZO(3) for failure to pay the duty within the time stipulated under Rule 96ZO.

2. The appellants were engaged in the manufacture of non-alloy steel ingots which were classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. The appellants had opted for compounded levy scheme from September, 1997 to March, 2000 and therefore, opted to discharge the duty liability under Rule 96ZO(3) of the erstwhile Central Excise Rules, 1994 read with section 3A of Central Excise Act, 1944.

3. It is the case of the department that in the cause of scrutiny of RT 12 returns for the month of April, 1998 to March, 2000, it was noticed that the appellants had failed to discharge their duty liability to the tune of Rs.1,06,91,835/- within the prescribed time limit. However, subsequently, over a period of time, the appellants discharged the entire duty liability along with the interest payable thereon. Thereafter, a show cause notice came to be issued on 4th of December, 2006 requiring the appellants to satisfy the authorities as to why penalty should not be imposed in terms of statutory provisions.

4. After hearing the appellants, the Commissioner passed the impugned order imposing penalty as stated above. It is the case of the appellants that the learned Commissioner erred in imposing the penalty inspite of the fact that the proceedings were initiated after a lapse of period ranging from 6 years to 8 years whereas the entire duty amount was already paid as also the interest payable thereon. According to the appellants, the learned Commissioner ought to have considered that proceedings for penalty, if any, could have been initiated within reasonable period of time in the absence of any period being prescribed for the same. In view of section 11A, which though not directly applicable, the principle therein ought to have been applied. It is also their case that the records nowhere disclose any intention to evade the duty nor any willful mis-statement or suppression of facts by the appellants and therefore, there was no justification for imposing the penalty.

5. The learned advocate appearing for the appellants has strenuously argued that undoubtedly the provisions of law in question comprised under Rule 96ZO(3) do not prescribe any period of limitation for action being taken for imposition of penalty and in such a situation, it is settled law that such action should be initiated within a reasonable period from the date of cause of action. Besides section 11A of the Central Excise Act, 1944 which deals with the power of the authority to initiate action for recovery of duty clearly provides maximum period of 5 years and that too, in the circumstances specified thereunder. Being so, the excise duty which is payable under different provisions of the same statute, though provisions of

section 11 A of the said Act would not be attracted, yet the principle thereunder would apply even in relation to the proceedings under Rule 96ZO(3), as it is settled law that when there is no specific period of limitation prescribed for taking particular action, the same has to be initiated within a reasonable period. Considering the maximum period of 5 years prescribed under section 11A for recovery of duty and that too in specified circumstances, according to the learned advocate, it cannot be presumed that proceedings for similar action in terms of 96ZO could be initiated even beyond period of 5 years or that having so initiated, it can be said that same are initiated within a reasonable period. Reliance is sought to be placed in the following decisions:-

- 1) Collector of Central Excise, Jaipur vs. Raghuvar (India) Ltd.
2000 (118) ELT 311(SC);
- 2) State of Punjab vs. Bhatinda District Co-op. Milk P.Union Ltd.
2007(217) ELT 325;
- 3) Parekh Shipping Corpn. Vs. Asstt. Collector of Cus. Bombay
[1995 (80) ELT 781 (Bom)];
- 4) Indian Farmers Fertilizers Co.Op. Ltd. vs. CCE
[1989 (41) ELT 474];
- 5) CC, New Delhi vs. C.T. Scan Research Centre (P) Ltd.
[2003 (155) ELT 3 (SC)];
- 6) Rourkela Steel Plant vs. CCE, Bhubaneswar
[2008 (227) ELT 522 (Tri-LB)];
- 7) Commissioner of Trade Tax, Lucknow vs. Kanhai Ram Thekedar
[2005 (185) ELT 3]; and
- 8) Neeldhara Weaving Factory vs. DGFT, New Delhi
[2007 (210) ELT 658 (P &H)]

6. The proposition that when the law does not prescribe any specific period of limitation, the statutory authority must exercise the powers within a reasonable period of time from the date of cause of action cannot be found fault with as the same is well settled and reiterated by the Apex Court in Bhatinda District Co-op. Milk P. Union Ltd. case. That case was under Sales Tax Act and Apex Court was dealing with the issue relating to refund and power of Commissioner under section 21(1) of the Punjab General Sales Tax Act, and though such a power was bestowed upon the authority, there was no period of limitation prescribed for exercise of such power, the Apex Court held that the revisionary jurisdiction should ordinarily be exercised within 3 years. The Apex Court also held that question that as to what would be reasonable period would depend on the facts and circumstances of each case.

7. In Raghuvar (India) Ltd. case, the Apex Court was dealing with the provisions under section 11 A of the said Act and in that regard held that any law or stipulation prescribing the period of limitation to do or not to do a thing after the expiry of period so stipulated has a 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. It was further held by the Apex Court that Section 11A is not an omnibus provision which provides period of limitation for all or any and every kind

of action to be taken under the said Act or rules made thereunder but will be attracted only to cases where any duty of excise has not been levied or paid or has been short levied or short paid or erroneously refunded. The section also provides for an extended period of limitation to certain contingencies and situations. It was held that the provisions of section 11 A of the said Act would have no application to any action taken under Rule 57-I of the Central Excise Act, 1944 prior to its amendment on 6.10.98 and Rule 57-I of rules are not in any manner subject to 11 A of the said Act.

8. Even in case of Commissioner of Customs, New Delhi vs. C.T. Scan Research Centre case, it was held that in cases where the instances specified under section 28(1) of the Customs Act, 1962 are not specific, the said provisions of law would not be attracted and it would not debar the authorities from taking proper action on the bar of limitation under the provision of 28(1) of the said Act. In that regard, reference was made to its earlier decisions of CC (Import) Mumbai vs. Jagdish Cancer and Research Centre reported in 2001 (6) SCC 483. In other words, in the absence of provision for limitation to initiate a action for violation of a statutory provision in a statute, it cannot be said that a provision relating to a period of limitation for an action against violation of some other provisions of law under the same statute would automatically apply. A provision of law which is made applicable in specified situations mentioned thereunder cannot be applied to all other actions even under the same Act. A statute which comprises of various provisions regarding different actions for different type of violations and simultaneously prescribes period of limitation for taking

action in respect of some of such violations and at the same time do not provide any such period of limitation for action against one or two of such violations, it would disclose deliberate omission on the part of legislature to prescribe such period of limitation in respect of such violations, may be either because of very nature of violation or for some other reason, and therefore, the same would not permit Court or Tribunal either to prescribe period of limitation or to import the concept of reasonable period, either by way of interpretation or on application of principle of equity or reasonableness.

9. The contention that the authority could not have initiated action for imposing penalty ignoring mandate of section 11 A irrespective of fact whether the same is applicable to the facts of the case or not is also difficult to digest. Undoubtedly in terms of section 11 A, the action could be initiated generally within a period of one year and in some cases within a period of 5 years where the circumstances contemplated under the said provision of law are satisfied. In other words, the extended period of limitation can be invoked in cases where the requirement of section 11A are satisfied and not otherwise.

10. For the case in hand, the relevant provisions of law are to be found in sub rule 3 and 4 of Rules 96ZO(3), and the same read as under:

“Provided also that where the manufacturer fails to pay the whole of the amount of duty payable for any month by the 15th day or last day of such month, as the case may be, he shall be liable to, -

- (i) Pay the outstanding amount of duty along with interest thereon at the rate of 18% per annum calculated for the period from the 16th day of such month or the first day of next month, as the case may be, till the date of actual payment of the outstanding amount; and
- (ii) a penalty equal to such outstanding amount of duty or Rs.5000/- whichever is greater.

Provided further that if the manufacturer fails to pay the total amount of the duty payable for each of the months from September, 1997 to March, 1998 by the 30th day of April, 1998, he shall also be liable to pay a penalty equal to the outstanding amount of duty as on 30th day of April, 1998 or five thousand rupees whichever is greater."

11. If one peruses the above provisions of law relating to imposition of penalty, it will be at once clear that to impose the penalty under the above provisions of law, the pre-conditions stipulated for application of extended period of limitation under section 11A or 11AC are not attracted and that is the basic difference between section 11A or 11AC and the above quoted provisions of law. It is to be borne in mind that the above provisions of law were formulated under a scheme which was drawn for the benefit of manufacturers, giving option to the manufactures to choose the method of payment of duty. The legislature has in its wisdom provided penalty in cases of failure to comply with the obligation to pay the duty inspite of the fact that the timing and the manner relating to the payment of duty was by the choice of the assessee himself.

12. In order to contend that the scope and the mandate of a provision of law should be understood by referring to similar other provision of law either in the same statute or any other statute, it is necessary to establish the parity between two provisions as well as similarly between the circumstances in which both the provisions would be attracted. Once it is evident that the extended period of limitation under Section 11A or 11AC is invokable only upon being satisfied about the existence of the circumstances stipulated under section 11A and such a provision being conspicuously absent in the entire scheme and the provisions pertaining to the imposition of penalty under Rule 96ZO, it cannot be accepted that the principle behind section 11A would automatically get attracted in case of the proceedings under Rule 96ZO. Besides, the Apex Court has clearly held that the proceeding under Rule 96ZO are independent and distinct from those under the proviso to Section 11A.

13. In these circumstances, the contention on behalf of the appellants that applying principle behind section 11A, the authority could not have invoked powers under Rule 96ZO after the expiry of the period of 5 years cannot be accepted.

14. As regards the contention relating to the reasonable period, undoubtedly on expiry of period of limitation prescribed for taking any action, a valid right accrues to the other party and bearing in mind this principle of law, in cases of absence of any period of limitation, the proceedings are required to be initiated within a reasonable period. At the same time, when the matter relates to the statutory obligation to pay revenue,

it cannot be heard to say that any right accrues against the government and in favour of the defaulter on expiry of the period to perform such statutory obligation by him/ her, and that too in the absence of any statutory recognition to such right, and more particularly when the assessee has himself chosen the timing and methodology of discharging the obligation regarding the payment of duty. In such circumstances, lethargy or delay or failure on the part of the statutory authorities to perform their obligation to initiate proceedings against the defaulter cannot accrue any right in favour of such defaulter. Mere absence of provision of period of limitation to initiate action against the defaulters of such nature, it cannot be presumed to create any right in favour of defaulting assessee. Being so, the principle regarding reasonable period would not be attracted in strict sense in such cases and cannot be read in such provisions to grant bonanza to the white colour miscreants at the cost of public exchequer. In such cases, to import the concept of reasonableness or equity under the guise of interpretation would amount to rewriting the statutory provision contrary to the one drafted and finalized by the legislature.

15. As no other point is canvassed, for the reasons stated above, we find no substance in the appeal. Hence, the appeal along with the stay application, fails and are dismissed.

(Justice R.M.S. Khandeparkar)
President

(M. Veeraiyan ,
Member(Technical)