CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench - Court – I

CENTRAL EXCISE APPEAL No. 96 OF 2009

(*Arising out of Order-in-Appeal No. 80&81/2008(H-III)CE, dated 26.11.2008 passed by Commissioner of Customs, Central Excise & Service Tax (appeals-III), Hyderabad)*

TAHER ALI INDUSTRIES & PROJECTS PVT. LTD. .. APPELLANT
#1-11-251/4/B, 6th Floor,
Tirumala Heights,
Behind Shoppers Stop, Begumpet,
HYDERABAD – 500 016.

Vs.

Commissioner of Central Excise, Customs .. RESPONDENT
& Service Tax, Hyderabad-III Commissionerate,
L.B. Stadium Road, Basheerbagh,
HYDERABAD – 500 004.

APPEARANCE:

None for the appellant.
Shri A. Rangadham, Superintendent/AR for the respondent

CORAM: HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER No. A/30768/2020

DATE OF HEARING: 23.01.2020
DATE OF DECISION: 23.01.2020

[ORDER PER: P. VENKATA SUBBA RAO)

1. This appeal is filed against Order-in-Appeal No. 80&81/2008(H-III)CE, dated 26.11.2008. None appeared on behalf of the appellant.

2. Heard Ld. DR and perused the records.

3. The chronological events in this case are as follows:

a) On 06.06.2005, a show cause notice was issued to the appellant proposing to the demand of differential duty along with interest and impose penalties which culminated them in Order-in-Original No. 6/2006 J.C., dt. 31.01.2006.

b) Instead of appealing to the Commissioner (Appeals) who is the correct first appellate authority, the appellant had filed an appeal with the Commissioner of Customs & Central excise, Hyderabad-II. Subsequently, on directions of the Tribunal in Final Order No. 548/2008, dt. 05.05.2008, the original appeal memorandum was transferred from the office of the Commissioner of Customs & Central Excise to the office of Commissioner (Appeals) who was the correct first appellate authority.

c) Along with the appeal, the appellant filed an application for stay, upon which the order in stay petition No. 6/2008 (H-III) CE, dt. 30.05.2008 was passed directing the appellants to deposit the duty and penalty as ordered by the lower authority and report compliance. It was indicated in this order that on complying with these directions, the appellants would be given an opportunity to be heard on 27.06.2008 at 12.00 hrs in the appeal filed by them.

d) The appellant chose not to make the pre-deposit as per the direction in terms of Section 35F of Central Excise Act, if the pre deposit is not made, the appeal is liable to be rejected. Accordingly, by Order-in-Appeal No. 46 & 47/2008 (H-III) CE, dated 30.06.2008, the appeals were dismissed.

e) Thereafter, the appellant filed a writ petition No. 15559 of 2008 before the Hon'ble High Court of Andhra Pradesh at Hyderabad. After hearing the Ld. Counsel for the petitioner, the Hon'ble High Court held that ends of justice would be met if the appeals are revived and accordingly disposed of the petition directing the Petitioner to deposit half of the disputed tax and one fourth of the penalty within eight weeks from the date of that order and on such deposit, the respondents were directed to dispose of the appeals in accordance with the law.

f) After the order of the Hon'ble High court, the appellant made the pre-deposit as directed and thereafter the Commissioner (Appeals) had, by Order-in-Appeal No. 80&81/2008(H-III)CE, dated 26.11.2008, after examining the matter at length, found no merit and substance in the appeal and rejected the same and upheld the order of the original authority.

g) Thereafter, the appellant filed the present appeal along with stay application No. E/Stay/69/2009. This stay application was disposed of by the Stay Order No. 866/2009, dt. 01.05.2009 staying further recovery of the duty and penalty over and above what was already deposited i.e. 50% of duty and 25% of the penalty, in pursuance of the order of Hon'ble High Court of Andhra Pradesh.

h) The appeal was, thereafter, listed several times but none appeared on behalf of the appellant.

i) Finally, by Final Order No. A/31310-31311/2018, dated 05.10.2018, when none appeared on behalf of the appellant nor there was any request for adjournment, the appeals E/96/2009 and E/97/2009 were dismissed for non prosecution.

j) After the dismissal, the appellant filed application for restoration of appeal vide application No. E/ROA/30317/2019 which was allowed by the Tribunal by Miscellaneous Order No. 30420/2019, dated 21.10.2019, directing it to be listed before the next Division Bench. Accordingly, the appeal was listed on 18.11.2019. The appellant did not appear again during this hearing. Therefore, the matter has been adjourned to today i.e. 23.01.2020. Again, none appeared on behalf of the appellant despite notice.

k) In this factual scenario, we have heard the Ld. DR and perused the records and proceed to decide the matter on merits.

4. At the outset, we cannot but observe that the conduct of the appellant does not show his bonafides. In the first place, they have filed an appeal against the order of the original authority in the wrong office and thereby passed sufficient time. When, on the direction of the Tribunal, the file was transferred to the proper authority before whom they should have filed the appeal in the first place, they did not make the requisite pre deposit in compliance of Section 35F of Central Excise Act, 1944, consequently the appeal got dismissed. They filed a Writ Petition before the Hon'ble High Court of Andhra Pradesh, on whose direction, they made the pre deposit to the extent of 50% of the duty and 25% of the penalty. Thereafter, the impugned order was passed after examining the merits of the case, upholding the order of the lower authority and rejecting the appeal. The appellant filed the present appeal along with stay application and after the stay was granted, they did not appear before the Tribunal for hearings which culminated in appeal being dismissed for non prosecution. After the dismissal, they filed an application for Restoration of Appeal and the appellant was represented in the application for restoration of appeal. Once the appeal was restored with the direction that it will be heard, it was listed for hearing in the next Division Bench. The appellant did not appear and the matter was listed on 18.11.2009 and today also they did not appear. Without prejudice on the above observations regarding the conduct of the appellant, we proceed to decide the matter on merits.

5. The facts of the case in brief are that the appellant M/s Taher Ali Industries & Projects Pvt. Ltd. had taken over a proprietary firm viz; Taher Ali Engineers & Manufacturers, Aghapally village, Ibrahimpatnam Mandal, Ranga Reddy District. The appellant also had another unit at Puddukkttai in Tamilnadu. Central Excise registration is now linked to the PAN issued by the Income Tax authorities. The appellant had given their own PAN to obtain Central Excise Registration in Hyderabad. They have obtained another Central Excise registration number in Pudukkottai by giving the wrong PAN viz; the PAN of the Managing Director of the company. Thus, by giving two different

PANs, although the company is only one, they were able to obtain two different Central Excise registration numbers.

6. The appellants have availed exemption under notification No. 9/2001 CE, dated 01.03.2001 and 9/2002 CE, dated 01.03.2002, as amended by virtue of which they paid Central Excise duty @ 9.6% plus advalorem on the value of clearances upto Rs. 100.00 lakhs and @ 16% advalorem only after crossing this slab. While calculating the value of clearances, they have not reckoned the value of clearances of their Puddukkottai unit which is part of the same legal entity as required under the exemption notification. By giving wrong PAN and thereby obtaining a different Central Excise registration, the appellant has escaped the detection until the investigations led to the discovery of the facts. Accordingly, show cause notices were issued proposing to recover the differential Central Excise duty along with interest and impose penalties. These were decided by the Jt. Commissioner in his Order-in-Original No. 6/2006 J.C., dt. 31.01.2006, confirming the demand of Rs.8,79,633/- under proviso to section 11A of Central Excise Act, 1944 along with interest and under Section 11 AB. He also imposed a penalty of equal amount under section 11 AC and a penalty of Rs. 1.00 lakh under Rule 173Q of Central Excise Rules 1944, Rule 25 of Central Excise Rules, 2001 and Rule 25 of Central Excise Rules 2002 for contravention of the provisions of Central Excise Act & Rules. He further imposed a penalty of Rs. 25,000/- upon Shri Taher Ali, Managing Director of the appellant firm under Rule 209A of Central Excise Rules, 1944 and Rule 26 of Central Excise Rules 2001 and Rule 26 of Central Excise Rules, 2002. Against this order, the appellant appealed to the first appellate authority which was finally decided by the impugned order by the first appellate authority, upholding the order of the lower authority. Aggrieved by this order, the present appeal is filed on the following grounds:

a) The show cause notice dt. 06.06.2005 was issued by the Additional Commissioner of Central Excise while the adjudication order was passed on 31.01.2006 by Jt. Commissioner, who is subordinate to him. Therefore, the adjudication order is liable to be set aside without any decision on the merits.

b) The Unit at Puddukkottai in Thanjavur is a separate entity but was a joint venture of appellant with another company M/s Godavari Prestressed Pipes & Structures Pvt. Ltd.

7. We have considered both these arguments. As far as the first point of question is concerned, in the hierarchy of the Department of Customs & Central Excise, below the Commissioner are the Additional/Joint Commissioner, both are at the same level and the officer after completing some years of service as Joint Commissioner, is granted a non-functional selection grade and is called Additional Commissioner instead of Joint Commissioner. It is not the case that the Joint Commissioner is subordinate to the Additional Commissioner or Additional Commissioner is supervisory authority for the Joint Commissioner. Therefore, at the same post one occupant of the office could be an Additional Commissioner and his successor could be a Joint Commissioner or vice versa. The show cause notices were issued by the Officer in the particular position and so were the Orders-in-Original. In this case, if the Additional Commissioner has issued the show cause notice and his successor Joint Commissioner decided the matter, we find no infirmity at all in such a decision.

8. As far as the contention that the Unit at Puddukkottai was a joint venture between the appellant and M/s Godavari Prestressed Pipes & Structures Pvt. Ltd. is concerned, there is nothing in the records to show that a different legal entity has been created or that a PAN has been taken in the name of a different legal entity. In both the units (at Hyderabad and Puddukkottai), the registration was done in the name of Taaher Ali Industries & Projects Pvt. Ltd. i.e. the appellant. Evidently, one legal entity should have been only one PAN. Since the Central Excise Registration is PAN based, once an application is made along with correct PAN, only one Central Excise Registration can be issued. Instead, in this case, the appellant used the personal PAN of the Managing Director instead of a PAN of the appellant themselves and thereby fraudulently obtained a second Central Excise Registration in Puddukkottai. It would have been a different case, if a separate joint venture with a different PAN number and separate Central Excise registration was obtained in the name of joint venture. On a perusal of the joint venture agreement entered into by the appellant and M/s Godavari Prestressed Pipes and Structures Pvt. Ltd., it is seen that the name of the joint venture "Taher Ali Industries & Projects Pvt. Ltd., Hyderabad" with the same address as the appellant. Both the units at Hyderabad and Puddukkottai, Tamilnadu are functioning in the name and style of "Taher Ali Industries & projects Pvt. Limited". The findings of the first appellate authority in para 4 of the impugned order are:

> *"I have carefully gone through the records of this appeal and the submissions made by the Appellants. The adjudicating authority's findings recorded in the impugned order have been duly considered by me. The short issue before me whether or not the value of clearances of M/s Taher Ali Industries & Projects Pvt. Ltd., Hyderabad and the unit at Tamil Nadu should be clubbed for determining the eligibility of the SSI benefits? On perusal of the joint venture agreement entered into between M/s Taher Ali Industries & Projects Pvt. Ltd., Hyderabad and M/s Godavari Prestressed Pipes & Structures Pvt. Ltd., Hyderabad, it is seen that the name of the joint venture is M/s Taher Ali Industries & Projects Pvt. Ltd., (TIPL) Hyderabad and the address is the same as that of the former. The former is liable for the entire execution of the contract including the fulfilment of liabilities and payments as the leader of the joint venture. Both the units at Hyderabad and Tamilnadu are functioning in the name and style of TIPL and the Central excise Registration is also in the name of TIPL. From the nature of the joint venture agreement, it is evident that Godavari Prestressed Pipes & Structures (P) Ltd., Hyderabad is only a dummy entity and all the shots are called by TIPL. The contention of the department is that TIPL have deliberately suppressed the existence of the unit at Thanjavur and this contention is fortified by the act of the Appellants in furnishing the PAN number allotted to Shri Taher Ali, Managing Director of TIPL at the time of seeking PAN based Central Excise Registration. At the time of personal hearing, the Appellants have submitted various documents such as copies of ledger accounts of M/s Sona Industries. M/s Thread Form Machinery Industries etc, letter from M/s Subash Pipes Ltd., list of plant and machinery installed at Tanjore factory in support of their contention that the appellants are a separate legal entity. However, the said documents in no way help the Appellant's cause. As seen from the joint venture agreement and the nature of the operations undertaken by the Appellants, it is clear that the*

units at Hyderabad and Thanjavur are one and the same notwithstanding the joint venture agreement which is only a garb to camouflage the true identity. In these circumstances, I do not wish to interfere with the impugned order."

9. We find the above findings of the first appellate authority are quite balanced and find no reason to interfere with them. Accordingly, the impugned order is upheld and the appeal is rejected.

(Operative portion of the order pronounced in open court on conclusion of hearing)

(Dr. D.M. MISRA)
(MEMBER (JUDICIAL)

(P. VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

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