NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6058 OF 2011
(Arising out of S.L.P.(C) No.13594 of 2009)

C.C.E., Mangalore .....Appellant.

Versus

M/s. Pals Microsystems Ltd., Mangalore …..Respondents

J U D G M E N T

ANIL R. DAVE, J.

1. Delay condoned.

2. Leave granted.

3. Being aggrieved by the judgement and order dated 1st July, 2008 delivered in the CEA No. 59/2007 by the High Court of Karnataka at Bangalore, this appeal has been filed by the Revenue.

4. The respondent, a limited company, is a holder of Central Excise Registration and is a manufacturer of data processing machines and is also availing benefits under Modvat Scheme. On 25.10.1996, Superintendent of Central Excise visited the factory premises of the respondent-assessee for verification of the stock of inputs on which Modvat credit was availed. It was noticed that there was a vast difference between physical stocks available and that shown in RG23A Part 1 Register. The Managing Director of the respondent-assessee, in his statement dated 25.10.1996 given before the Superintendent of Central Excise, West Range, Mangalore, admitted that the actual physical stock of inputs and entries in the RG23A Part 1 Register did not tally because the respondent-assessee had removed the Modvatable inputs for sales and warranty replacements. The Managing Director of the respondent-assessee also admitted the discrepancy i.e. shortage in the stock of inputs and stated that their office assistant, who was maintaining their books of accounts, was only a matriculate and being a non technical person, committed mistakes. He again stated that the mistake was also due to the clubbing of different Modvat inputs coming under the same heading. The correct figure was shown in his letter dated 21.1.1997 with all the details, admitting liability of Rs.51, 111/- due to the said lapses. He also conceded that, due to the aforestated mistakes, the figure of RG23A Part I did not reflect the actual quantity in stocks and enclosed a detailed worksheet showing monthly figures of opening balance, receipts, issues and closing balance for the past years.

5. On 26.06.2000, a show cause notice was issued to the respondent-assessee calling upon it to show cause as to why Central Excise Duty of Rs. 1,91,537, equivalent to the Modvat credit availed on the shortage of physical stock of Modvatable inputs should not be recovered from it and penalty under Section 11AC of the Central Excise Act, 1944 (hereinafter referred to as 'the Act') read with Rule 173Q and Rule 210 of the Central Excise Rules, 1944 be not imposed and interest thereon should not be recovered from it under Section 11AB of the Act.

6. After considering the reply and upon hearing a representative of the respondent-assessee, the Joint Commissioner of Central Excise vide his order in original Sl. No. 14/2000 dated 09.08.2000, dropped further proceedings in the matter after giving a warning to the respondent-assessee.

7. Aggrieved by the order of the Joint Commissioner of Central Excise, the Department filed an appeal before the Commissioner (Appeals), Bangalore. The Commissioner (Appeals), by the virtue of the order in appeal No. 591/2002 dated 04.10.2002, allowed the appeal.

8. Being aggrieved by the order of Commissioner(Appeals), the respondent-assessee filed an appeal before CESTAT, Bangalore. The CESTAT, Bangalore, by the order No. 1017/2005 dated 28.6.2005, held that the second statement of the Managing Director which was given

before issuance of Show Cause Notice, accepting the discrepancies and admitting the liability to an extent of Rs. 51,111/- was not taken into consideration by the Joint Commissioner and the Commissioner(Appeals). They had proceeded only on the basis of the first statement recorded. The CESTAT did not agree with the reasons assigned by the Commissioner(Appeals) for allowing the appeal and remanded the matter to the original authority, for verification of the assessee's contention and for passing a detailed, considered order after taking into consideration the entire evidence on record.

9. In pursuance of the aforestated order, after hearing the parties, the Joint Commissioner vide his order dated 25.10.2005 confirmed the duty demand of Rs.1,91,537/- under Rule 57 I of the Central Excise Rules, 1944, read with proviso to Section 11A(1) of the Act. Out of the said amount, Rs.76,111/- already paid by the assessee had been appropriated. Further, a penalty of Rs.1,91,537/- was imposed u/s 11AC of the Act and interest u/s 11AB of the Act was made payable by the respondent-assessee.

10. Aggrieved by the said order dated 25.10.2005, the respondent-assessee filed an appeal before the Commissioner(Appeals) but the Commissioner(Appeals) dismissed the appeal, vide order dated 23.1.2006.

11. On appeal to the CESTAT, the Tribunal, relying on the judgement of this Hon'ble Court in ***Nizam Sugar Factory*** ***v.*** ***CCE, A.P.*** *2006 (11) SCC 573* allowed the appeal, vide its order dated 20.12.2006, holding that the show cause notice was issued belatedly and that too without prior permission of the Commissioner as per the provisions of Section 11A of the Act.

12. On appeal before the High Court of Karnataka, the High Court dismissed the appeal of the Revenue by holding that the Tribunal had rightly recorded a finding of fact stating that initiation of proceedings against the respondent-assessee was barred by limitation.

13. Aggrieved by the aforesaid judgment of the High Court, the Appellant-Revenue has filed this appeal before this Court.

14. The Learned Counsel for the Appellant-Revenue submitted that the decision of this Court in ***Nizam Sugars*** ***(supra),*** has no application to the facts and circumstances of the instant case. Moreover, he contended that the permission of Commissioner for invoking the provisions of Section 11A of the Act, by the Joint Commissioner was not necessary. Thus he submitted that the judgment delivered by the High Court deserves to be quashed.

15. Upon hearing the counsel appearing for the appellant and upon perusal of the judgment of the High Court and other orders passed by the authorities, we are of the view that the impugned judgment does not need any interference.

16. We have carefully gone through the facts as ascertained by the Tribunal. Upon perusal of the order of the tribunal as well the judgment delivered by the High Court, it is not in dispute that alleged suppression of payment of duty by the respondent-company was brought to the notice of the authority on 25th October, 1996, when the Superintendent of Central Excise had inspected the premises of the respondent-assessee, whereas the show cause notice was issued on 26th June, 2000. The department could not establish that there was any suppression of facts or a fraud on the part of the respondent-assessee. We find that the honest mistake committed in maintenance of stock register etc. was frankly admitted by the Managing Director of the respondent-assessee. There is no finding to the effect that there was a fraud or willful mis-statement or suppression of facts. Thus, it is very clear that the notice was issued after expiry of the period of limitation. In the set of facts, the judgment delivered in the case of **Nizam sugar**

(supra) would squarely be applicable. In view of the aforestated facts, we are of the view that the judgment delivered by the High Court cannot be interfered.

17. In our opinion, the appellant has failed to make out a case that proviso to Section 11A of the Act was applicable. In view of the fact that no case was made out for invoking proviso under Section 11A of the Act, in our opinion, the judgment delivered by the High Court is just and proper and it deserves to be affirmed.

18. For the aforestated reasons, we do not see any substance in this appeal and, therefore, the appeal is dismissed with no order as to costs.

…….....J.
(Dr. MUKUNDAKAM SHARMA)

…….....J.
(ANIL R. DAVE)

New Delhi
July 29, 2011.