



Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Central Excise Ap.No.21/2018

Date of Order: 26.03.2019

Commissioner of Goods & Service Tax, Shillong	Vs.	M/s Meghalaya Cast and Alloys Pvt. Ltd.
--	-----	--

Coram:

Hon’ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon’ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s)	: Mr. N Mozika, Adv Mr. ML Nongpiur, Adv
For the Respondent(s)	: Mr. D Sahu, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

Per Mohammad Yaqoob Mir, ‘CJ’: (ORAL)

- Under Section 35G of the Central Excise Act, 1944, order dated 22.03.2018 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata, is assailed.
- Order in original No.2/2014/CCE/Shillong dated 28.02.2014 was challenged in an appeal before the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), which to the extent of imposition of penalty has been set aside on the ground that there has been no suppression on the part of the respondent. Furthermore, whatever duty paid was to be refunded to the respondent. In short, it appears that in the context of revenue neutrality, imposition of penalty has been set aside.
- Learned counsel for the appellant would submit that the learned CESTAT has overlooked the limited revenue neutrality and the notifications issued from time to time. Buttressing the submission referred to the notification No.32/1999-CE dated 08.07.1999 and notification No.14/2000-Central Excise dated 01.03.2000 in terms



whereof, 100% of the duty paid was refundable. Whereas, in terms of notification No.20/2007-Central Excise dated 25.04.2007 benefit of 100% duty refund was applicable to all units located in North Eastern States which include Meghalaya. However, vide **notification No.17/2008-Central Excise dated 27.03.2008 issued by the Government of India, Ministry of Finance (Department of Revenue), duty payable of value addition shall be equivalent to the amount calculated as a percentage of the total duty payable on the said excisable goods of the description specified in column (3) of the table and falling within the chapter of First Schedule as are given in the corresponding entry in column (2) of the said table at the rates specified.** The case of the appellant falls within chapter 72 of First Schedule.

4. The said notification dated 27.03.2008 was challenged before the High Court of Gauhati in a batch of writ petitions which were allowed including writ appeal vide judgment dated 20.11.2014. The said judgment was challenged before the Hon'ble Apex Court. Hon'ble Apex Court vide interim direction dated 07.12.2015 passed in I.A. No.3 of 2015 in Petition(s) for Special Leave to Appeal (C) No(s).11878 of 2015 has directed that **subject to the petitioners releasing 50% of the amount due to the respondent in terms of the impugned judgment on the respondents' furnishing solvent surety to the satisfaction of the jurisdictional commissioner, the operation of the impugned judgment shall remain stayed.**

5. The question of total revenue neutrality in terms of the notification No.32/1999-CE dated 08.07.1999 was eclipsed by the notification dated 27.03.2008 where-under duty refund has been reduced. Though the question as to whether notification dated 27.03.2008 will survive or not but as on date, it is in force therefore, on such basis complete revenue neutrality is not available.



6. Complete revenue neutrality is linked with the question of imposition of penalty in the context of the intention of a party to evade duty.

7. Section 11AC (1)(a) of the Central Excise Act, 1944 (hereinafter referred to as the Act) envisages that intent to evade payment of duty attracts imposition of penalty. The words with **intent to evade payment of duty as employed in sub-section (1)(a) of the Act assumes significance**. It is clear that the duty is chargeable but it is 100% refundable, the question of intention to evade payment of duty pales into insignificance. But where the duty charged is not 100% refundable, then any act of concealment, misstatement or suppression of facts will give rise to the intention to evade payment of duty.

8. Learned CESTAT has not looked into the above circumstances, more particularly, notification dated 27.03.2008 and in the same context, it appears that CESTAT has opined that the respondent were entitled to get refund of the tax discharged by them, as a result whereof, imposition of penalty has been set aside.

9. When learned counsel for the respondent was confronted with the said position, he did not oppose, remand of the case for fresh consideration by CESTAT rightly so because order of CESTAT for the stated reasons is not sustainable, same is set aside. The case is remanded back to CESTAT for deciding the appeal afresh.

10. Copy of this order be sent to CESTAT for information.

11. Appeal succeeds shall stand disposed of as above.

(H. S. Thangkhiew)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya

26.03.2019

"Lam AR-PS"