

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).2029/2019
(Arising out of Special Leave Petition (C) No(s).4722/2019)

KUSUM LAMBA

APPELLANT(S)

VERSUS

COMMISSIONER CENTRAL EXCISE, INDORE

RESPONDENT(S)

O R D E R

Leave granted.

Heard learned counsel for the parties, since a short question, that too pure question of law is involved in the instant case.

The appellant is engaged in the casting of machines and unmachined castings of the Hubs and Drums used in motor vehicles falling under Chapter 87 of the Schedule to the Central Excise Tariff Act, 1985. The respondent visited the factory of the appellant on 16.01.1997 and found that the appellant was manufacturing machined and rough casting of Brake Drum of motor vehicles of various sizes. The respondent also recovered stencils of various marks in the factory of the appellant and marking of such type was also found on manufacturing items. A show cause notice was given on 10.02.1999 by the respondent to the appellant whereby it was alleged that the appellant was manufacturing goods of different brands and availing the benefit of SSI exemption which

otherwise would not have been admissible to them and asked to show cause as to why excise duty along with penalty under Section 11AC of the Central Excise Act, 1944 ('the Act') be recovered from the appellant. The Joint Commissioner Customs & Central Excise, Indore after taking into consideration the reply of the appellant directed recovery of tax Rs.4,19,870/- and 100% mandatory penalty under Section 11AC of the Act. The appellant preferred an appeal against the assessment order dated 31.03.2000 before the Commissioner (Appeals) who after considering the case of the appellant allowed the appeal substantially. It is held that excise duty on machined goods cleared under the brand name had been rightly confirmed by the adjudicating authority. However, no duty was chargeable on clearance of goods cleared under brand names "Gwalior" and Tusker". It is further held that mandatory penalty under Section 11AC was reduced equivalent to duty to be levied on goods cleared by the appellant for the period commencing from 28.09.1996. The appellant challenged the order dated 29.08.2003 passed by the Commissioner (Appeals) by preferring an appeal before the Customs Excise & Service Tax Appellate Tribunal (CESTAT) insofar as mandatory penalty is concerned. The respondent also filed an appeal before the CESTAT against the order dated 29.08.2003 passed by the Commissioner (Appeals). The CESTAT vide its order dated 07.10.2004 allowed the respondent's appeal thereby quashing the order dated 29.08.2003 passed by the Commissioner (Appeals) restoring the order dated 31.03.2000 passed by the adjudicating authority. The appellant challenged the order passed by the CESTAT before the High Court. Vide impugned order the High Court dismissed the appeal of the

appellant.

From the aforesaid, it transpires that the penalty is imposed upon the appellant under Section 11AC of the Act for the period from 01.04.1994 to 16.01.1997. A show cause notice for this purpose was given on 10.02.1999 taking shelter of extended period of limitation on the ground that the appellant had withheld vital information and failed to disclose the same. Insofar as initiating the action for penalty proceedings under the aforesaid provision and imposition of penalty is concerned, this Court does not find any fault with the action taken by the revenue authorities which has been upheld till the High Court. However, the moot question is as to whether the penalty could also be imposed under the aforesaid provision for the period prior to 28.09.1996 inasmuch as Section 11AC of the Act under which the penalty proceedings were initiated, was brought on the statute book by amendment only w.e.f. 28.09.1996. It is held by the High Court itself in the impugned judgment that Section 11AC is prospective in nature. In spite of that the High Court has upheld the penalty imposed by the appellant for the entire period including the period prior to 28.09.1996. We are of the opinion that here the High Court clearly fell into error. Undoubtedly, Section 11AC is a penal provision. Once it is held to be prospective in nature, it becomes effective only from the date it was brought into force i.e. 28.09.1996. Therefore, no penalty for the period prior to this date can be imposed under this provision.

We, therefore, allow this appeal partly thereby quashing the

penalty for the period 01.04.1994 to 27.09.1996. Insofar as the penalty from 28.09.1996 onwards is concerned, the same is upheld.

.....J.
[A.K. SIKRI]

.....J.
[S. ABDUL NAZEER]

NEW DELHI;
FEBRUARY 25, 2019.

ITEM NO.38

COURT NO.2

SECTION IV-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 4722/2019

(Arising out of impugned final judgment and order dated 15-03-2018 in MACE No. 7/2007 passed by the High Court Of M.P At Gwalior)

KUSUM LAMBA

Petitioner(s)

VERSUS

COMMISSIONER CENTRAL EXCISE INDORE

Respondent(s)

Date : 25-02-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr.Ravindra Shrivastava, SR. Adv.
Mr. Divyakant Lahoti, AOR
Ms. Praveena Bisht, Adv.
Ms. Amrita Grover, Adv.
Mr. Parikshit Ahuja, Adv.
Mr. Abhijeet Shrivastava, Adv.

For Respondent(s) Mr. Vikram Banerjee, ASG
Mr. K. Radhakrishnan, Sr. Adv.
Mr. Parveen Gautam, Adv.
Mr. Nalin Kohli, Adv.
Mr. Ankit Roy, Adv.
Ms. Namisha Chadha, Adv.
Mr. B. Krishna Prasad, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is partly allowed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(ASHWANI KUMAR)
COURT MASTER (SH)

(RAJINDER KAUR)
BRANCH OFFICER

(Signed order is placed on the file)