

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Neutral Citation No. 2023:PHHC:148441-DB

(1)

CEA-6-2022

Commissioner of Central Excise & Service, Delhi-IV (now Commissioner of Central Goods & Services Tax, Faridabad), Faridabad

....Appellant(s)

Versus

A.K.Singh, Director, M/s Pelican Tobacco Co. Ltd.

.... Respondent(s)

(2)

CEA-9-2022

Commissioner of Central Excise & Service, Delhi-IV

....Appellant(s)

Versus

R.K.Singh, Director, M/s Pelican Tobacco Co. Ltd.

.... Respondent(s)

Reserved on : 17.11.2023

Pronounced on: 01.12.2023

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Sourabh Goel, Senior Standing Counsel
Ms.Geetika Sharma, Advocate, for the appellant.

None for the respondents.

G.S. Sandhawalia, J. :-

1. The present two appeals are directed against the orders dated 27.08.2018 (Annexure A-9) passed by Customs, Excise and Service Tax Appellate Tribunal (CESAT) wherein vide common order, the appeals of the Director of the Company, M/s Pelican Tobacco Co. Ltd. were restored without payment of necessary pre-deposit under the provisions of Section 35 of the Central Excise Act, 1954 which was waived off vide order dated 24.10.2018 (Annexure A-10) and thereafter allowed on merits on 01.04.2019 (Annexure A-11).

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2. In our considered opinion, the following question of law would arise for consideration:

“Whether the Ld. CESTAT had erred in passing the order dated 27.08.2018, Annexure A-7 restoring the appeal of the respondent which was earlier dismissed for want of mandatory pre-deposit, ignoring the fact that the respondent had never challenged the order dated 14.03.2013, Annexure A-3 whereby the respondent was granted exemption from pre-deposit subject to the pre-deposit by M/s Pelican Tobacco Co. Ltd., which order was modified by the Hon’ble High Court vide order dated 26.08.2013, Annexure A-4 as well as by the Hon’ble Supreme Court, however, M/s PTCL had failed to make the pre-deposit and therefore the appeal of the respondent was dismissed vide order dated 23.09.2013, Annexure A-5?”

3. A perusal of the paperbook would go on to show that a demand/show cause notice dated 30.04.2010 (Annexure A-1) was issued upon the premises of M/s Pelican Tobacco Co. Ltd. which was registered with the Central Excise Department and engaged in manufacture of various brands of cigarettes. The premises had been searched on 21.04.2008 under the search warrants and resultantly vide detailed order dated 23.08.2011 (Annexure A-2), various amounts were imposed as penalty under the provisions of the said Act both upon the company and the Directors-respondents along with other officials. The relevant part of the order imposing the said amounts reads as under:

“ORDER

- (i) I hold that the extended period provision as envisaged under proviso to Section 11A(1) of Central Excise Act, 1944 is invokable in this case.
- (ii) I confirm and order recovery of Central Excise duty of Rs.2,43,58,512/- (BED Rs.1,82,01,178/- + ADE Rs.7,70,254/- + NCCD Rs.27,03,840/- + ADD Rs.21,01,144/- + E.Cess Rs.4,75,528/- + S&H E.Cess Rs.1,06,568/-) from M/s Pelican

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Tobacco Co. Ltd., Plot No.37B, Sector 6, Faridabad under Section 11A(1) of the Central Excise Act, 1944;

- (iii) I confirm and order recovery of Central Excise duty of Rs.9,28,37,834/- (BED Rs.7,26,56,307/- + NCCD Rs.98,90,235/- + ADD Rs.75,87,280/- + E.Cess Rs.18,02,674/- + S&H E.Cess Rs.9,01,338/-) from M/s Pelican Tobacco Co. Ltd., Plot No.37B, Sector 6, Faridabad under Section 11A(1) of the Central Excise Act, 1944;
- (iv) I confirm and order recovery of Central Excise duty of Rs.51,37,54,251/- (BED Rs.38,73,38,299/- + NCC Rs.5,52,28,601/- + ADD Rs.4,28,84,243/- + ADE Rs.1,61,28,485/- + E.Cess Rs.1,00,31,593/- + S&H E.Cess Rs.21,43,030/-) from M/s Pelican Tobacco Co. Ltd., Plot No.37B, Sector 6, Faridabad under Section 11A(1) of the Central Excise Act, 1944;
- (v) I order recovery of interest on the above determined demands of duty from M/s Pelican Tobacco Co. Ltd., Plot No.37B, Sector 6, Faridabad under Section 11A(1) of the Central Excise Act, 1944;
- (vi) The amount of Rs.1,08,00,000/- already deposited by M/s Pelican Tobacco Co. Ltd., Faridabad towards duty liability during the course of investigation, is appropriated against the above demands of duty and the balance amount of determined duty is required to be recovered from them forthwith.
- (vii) I impose penalty of Rs.63,09,50,597/- (Rupees Sixty Three Crores Nine Lacs Fifty thousand Five hundred Ninety Seven only) i.e. equivalent to the total amount of duty determined, on M/s Pelican Tobacco Co. Ltd., Plot No.37B, Sector 6, Faridabad under Section 11AC of Central Excise Act, 1944. However, in terms of proviso to Section 11AC if the entire amount of duty and interest as due thereon is paid by the party within 30 days from the date of receipt of this Order, then the amount of penalty will be equal to 25% of the total amount of duty so determined provided the reduced amount of penalty is also paid within 30 days from the date of receipt of this order. Further the no separate penalty under Rule 25 of the Central Excise Rules, 2002 is required to be imposed once the penalty has been imposed under Section 11AC of the Act.

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- (viii) I impose penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on Shri Atul Kumar Singh, Director of M/s Pelican Tobacco Co. Ltd., Faridabad under Rule 26(1) of the Central Excise Rules, 2002.
- (ix) I impose penalty of Rs.10,00,00,000/- (Rupees Ten Crores only) on Shri Rajiv Kumar Singh, Director of M/s Pelican Tobacco Co. Ltd., Faridabad under Rule 26(1) of the Central Excise Rules, 2002.”

4. The Directors, namely, Shri A.K.Singh and Shri R.K.Singh, respondents herein along with the company and other employees preferred appeals and stay applications bearing No.E 2712/2011, E 2714, E 2715, E 2716, E 2717 and E 289/12. Vide order dated 14.03.2014 (Annexure A-3), directions were issued to the company to deposit 50% of the duty component assessed which had been fixed from the date of receipt of the order and the said order dated 23.08.2011 was accordingly suspended. It was directed that in default of the deposit the respondents were entitled to take steps for recovery of the entire amount of penalty of the 50% of the default (after taking credit for Rs.1,08,00,000/- already deposited). The company approached this Court by filing CEA-65-2013 through the Director Mr.A.K.Singh and the Co-ordinate Bench by taking into account the fact that the premises were closed for the last 5 years accepted the appellant's submission to the extent that Rs.6 crores should be deposited within 15 days by the assessee vide order dated 26.08.2013 so that the appeals could be heard on merits. On account of failure of the said amount being deposited, the Tribunal noticed that counsel for the appellants including the appeals filed by the Directors and as counsel also agreed that on account of non-deposit the appeals were required to be dismissed both for the non-compliance of the Tribunal's stay order read with the order of this Court dated 26.08.2013 passed the formal order of dismissal on

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23.09.2013 (Annexure A-5). It is a matter of record that thereafter CEA-65-2013 came up for consideration which was also dismissed on 10.10.2013 (Annexure A-6) since counsel had pleaded no instructions.

5. The company then filed SLP-28294-28295-2014 before the Apex Court wherein the amount which was required to be deposited by 31.12.2015 was reduced to Rs.4 crores vide the order dated 21.08.2015 (Annexure A-7). A condition was put that if the amount is deposited with the Tribunal, it will restore and hear the appeal, otherwise the appeal would stand dismissed. The amounts were apparently never deposited and therefore, the order effecting the dismissal of the appeal on an earlier occasion remained in force dated 23.09.2013 (Annexure A-5) read with order of the Apex Court. It has been pleaded by the Revenue that review petition was also dismissed.

6. Thereafter applications for condonation of delay in filing the restoration application were filed before CESAT along with the request for restoration of the appeal on behalf of the respondent-Directors taking a misconceived ground that no specific order had been passed against them and therefore the appeal should be restored. It was further pleaded that there was no specific order against the applicant Directors. The stay applications have been verified by none else but by Shri A.K.Singh, Director of the company on 10.08.2018 & 27.08.2018 (Annexures A-8 & A-9).

7. The Tribunal vide order dated 24.10.2018 (Annexure A-10), came to the conclusion that the company was to make the pre-deposit and therefore, the applicant should not suffer and therefore, recalled the earlier order dismissing the appeals bearing appeal Nos.2714 and 2715 of 2011 in which stay applications had been moved and interim order had been

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passed on 14.03.2013 whereby all the applications including the ones filed by the employees, the Directors of the company had been disposed of. The order thus restoring the appeals is against the facts on the record and the reasoning given is against the material placed on record.

8. As noticed above, the said Director himself was approaching this Court and the Apex Court by filing writ petitions and SLPs and was well aware that apart from the company he had also been denied the benefit of exemption from waiver of the pre-deposit and his appeals had been dismissed. The subsequent application for waiver was then allowed by another order dated 24.10.2018 (Annexure A-10) which cannot be sustained. The Tribunal went into the merits of the case and resultantly, by prima facie holding that since the factory was under the control of the Revenue, fraud/collusion cannot be alleged against the applicants and therefore the charge against the applicants could not be maintained without cross-examining the witnesses whose statements were relied upon by the Revenue. Resultantly, on 01.04.2019 (Annexure A-11), the said Tribunal allowed the appeals on merits rejecting the case of the Department that the appeals were already dismissed on account of non-compliance of the stay order and the order of the Tribunal merged with the order of the High Court. Keeping in view the fact that earlier order dated 27.08.2018 had not been challenged, the objection was overruled and the cases were decided on merits.

9. Thus, from the above sequence of events, it would be clear that the applicants-Directors themselves were filing the applications for restoration of the appeals which had already been dismissed by the Tribunal after noticing the non-compliance of the order not only of the Tribunal but also the order of this Court dated 10.10.2013 (Annexure A-6)

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whereby only Rs.6 crores was to be deposited. As noticed above, the Apex Court had reduced the amount further to Rs.4 crores and the appeal was only to be restored subject to the said deposits. The said amounts had never been deposited. The Directors could not hide behind the legal shield that the company had been directed to pay the amount and they were the persons who were agitating before this Court and the Apex Court that the company was functioning through them. The Tribunal in such circumstances has over-stepped its jurisdiction by allowing the application for condonation of delay and restoration of the appeals and thereafter proceeded ahead with the matter for the reasons best known to it. We do not wish to comment on the orders passed by the Tribunal in the present facts and circumstances.

10. Resultantly, we are of the considered opinion that the question of law must be answered in favour of the Revenue that the Tribunal had no jurisdiction and would have become functus-officio once the amounts had never been deposited inspite of the directions in the SLPs dated 21.08.2015. The applications filed at the belated stage by the Directors themselves in the year 2018 for condoning the delay on 10.08.2018 was apparently time-barred and there was no sufficient cause to condone the delay also which had been done by the Tribunal. The review application having been dismissed also by the Apex Court, the stay applications were misconceived as apparently the respondents-Directors had been playing the game of hide and seek with the Department and by misusing the process of the Court has wrongly been granted indulgence by the Tribunal.

11. Resultantly, the present appeals are allowed. We do not impose any cost upon the respondents since initially, at one point of time,

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counsel had put in appearance on 15.03.2023 but thereafter, did not put in appearance on 17.07.2023 when the matter was taken up and even today, has not put in appearance on their behalf.

(G.S. SANDHAWALIA)
JUDGE

01.12.2023
sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	Yes