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T Vs. Suzuki Limited

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Tamil Nadu

Decided On : Aug-22-1997

Reported in : (1999)(112)ELT173Tri(Chennai)

Appellant : T

Respondent : Suzuki Limited

Judgement :

1. The prayer in the application is for dispensation of the pre-deposit of a penalty of Rs. 42,36,757/- levied on the appellant in terms of Rule 57U(5).

2. The learned Advocate for the appellants has pleaded that the learned lower authority has levied this penalty equivalent to the Modvat credit which has been held to have been taken wrongly. He has pleaded that the appellants had taken the Modvat credit wrongly in terms of the rules during the period October '95 to January 96 and had reversed the entire credit so wrongly taken on the capital goods during 1995-96. He has pleaded that the appellants had placed all their records before the learned lower authority to show that they had not utilised, any portion of the Modvat credit which had been taken wrongly and he has in his order also entered the finding as under: "There is no allegation in the show cause notice about wrong utilisation of the credit taken".

He has pleaded that this finding would clearly show that the appellants had no mala fides in regard to the utilisation of the credit which had been taken by mistake. He has pleaded in terms of Rule 57U(5) the penalty leviable has been

statutorily prescribed as equivalent to the amount of Modvat credit wrongly taken. This provision, he pleaded came into force on 23-7-1996. He has pleaded that Hon'ble Supreme Court has in the case of Brij Mohan v. C/T reported in 120 ITR 1 has clearly held that the penal provisions applicable would be the ones which were applicable at the relevant time. In this regard, he has cited the following portion of the judgment of the Hon'ble Supreme Court: "The case of the assessee is that an assessment proceeding for the determination of the total income and the computation of the tax liability must ordinarily be made on the basis of the law prevailing during the assessment year, and in as much as concealment of income is concerned with the income relevant for assessment during the assessment year, any penalty imposed in respect of concealment of such income must also be governed by the law pertaining to that assessment year. We are unable to accept the contention. In our opinion, the assessment of the total income and the computation of tax liability is a proceeding which, for that purpose, is governed by entirely different considerations from a proceeding for penalty imposed for concealment of income And this is so notwithstanding that the income concealed is the income assessed to tax. In the case of the assessment of income and the determination of the consequent tax liability, the relevant law is the law which rules during the assessment year in respect of which the total income is assessed and the tax liability determined. The rate of tax is determined by the relevant Finance Act. In the case of a penalty, however, we must remember that a penalty is imposed on account of the commission of a wrongful act, and plainly it is the law operating on the date on which the wrongful act is committed which determines the penalty.

Where penalty is imposed for concealment of particulars of income, it is the law ruling on the date when the act of concealment takes place which is relevant. It is wholly immaterial that the income concealed was to be assessed in relation to an assessment year in the past." 3. He has pleaded, in view of the absence of attribution of any mala fide against the appellants, in law this much penalty could not have been levied. At the same time he argued no penalty can be held to be leviable in the facts and circumstances of the case. In any case, if at all any penalty is to be levied it should be fixed at a nominal amount.

4. The issue lies in a short compass, the facts are not in dispute. The question that falls for determination is only in respect of the quantum of penalty to be levied. With the consent of both the parties, we take up the appeal itself for disposal by granting dispensation of the pre-deposit of the penalty.

5. Heard the learned JDR for the department. He has pleaded that the appellants had sought to take large amount of Modvat credit without bringing the goods into their factory and the possibility of mis-utilisation of the Modvat credit could not have been ruled out. He has pleaded, the appellants are well established assessee and they should be aware of the requirements of the rules and a serious note of the same should be taken.

6. We have considered the pleas made by both the sides. We observe that the learned lower authority has levied a statutory penalty equivalent to the Modvat credit which had been taken wrongly and which position is not disputed by the learned Advocate for the appellants. We, therefore, while upholding that the appellants could not have taken the Modvat credit as was taken by them, proceed to address ourselves to the issue of quantum of penalty that should be levied in the facts and circumstances.

7. We observe that the provisions of Rule 57U(5) came to be introduced with effect from 23-7-1996, while offence in the case was committed during the period October' 95 to January' 96, the Hon'ble Supreme Court in the case of Brij Mohan v. CIT referred to supra has clearly held that the penal provisions as would be applicable would be the ones which were in force at the relevant time. The statutory penalty equivalent to the Modvat credit wrongly taken, therefore, could not have been levied in the facts and circumstances of this case. But that is not to say that the appellants are not liable to penalty. We observe the learned lower authority has taken note of the fact that there is no allegation against the appellants that they had wrongly utilised any portion of the credit which they had entered in the RG 23C register.

The credit has also been reversed on 19-3-1996. When this be the position, the penalty has to be determined with reference to the benefit and the violation and the injury suffered by the revenue. The appellants are assessees paying high duty,

according to the learned Advocate.

8. Taking into consideration the totality of the facts and circumstances of the case and pleas made, we are of the view that the ends of justice would be served if the penalty is reduced to Rs. 5,00,000/- (Rupees Five Lakhs).

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