Universal Automobile and Vs. Collr. of C. Ex. and Cus.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Nov-06-1989

Reported in : (1990)LC547Tri(Mum.)bai

Appellant : Universal Automobile and

Respondent : Collr. of C. Ex. and Cus.

Judgement :
1. When the stay petitions filed by the applicants were taken up for hearing on 21-9-1989, a question arose as to whether Shri S.K. Lakhani should file a separate appeal as regards the penalty imposed on him in his capacity as a partner in M/s. Universal Automobile & Ancillary Ind.

This issue is now followed up by the separate Misc. application, the hearing of which is listed today.

2. Shri Bharucha, the learned advocate on behalf of the applicants contended that Shri Lakhani is imposed with a penalty of Rs. 10 lakhs, as a partner of M/s. Universal Automobile Ancillary Ind. The firm has also been imposed with a separate penalty of Rs. 2 lakhs. Shri S.K.Lakhani is also a proprietor of M/s. Premier Electronics, on whom a separate penalty has been imposed. Shri Bharucha stated that a separate appeal has been filed by M/s. Premier Electronics, the proprietory concern of Shri S.K. Lakhani. The issue is only with regard to the joint appeal filed by M/s. Universal Automobile & Ancillary Ind. being a partnership firm having Shri S.K. Lakhani as one of the partners. His contention

is that the cause of action is the same and the penalties have been imposed for the same cause of action under a single order and not under a multiple order. He also took us through the relevant provisions of the Partnership Act, viz. Secs. 4,18, 25 & 26 to point out that the liability of each of the partner is individual and serveral. As per the definition contained in Section 4, partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. As per Section 18 of the said Act, partner is the agent of the firm for the purposes of the business of the firm. As per Section 25, every partner is liable jointly with all the other partners and also severally, for all acts of the firm done, while he is a partner. As per Section 26, ibid, where, by the wrongful act or omission of a partner acting in the ordinary course of the business of a firm, or with the authority of his partners, loss or injury is caused to any third party, or any penalty is incurred, the firm is liable therefore, to the same extent as the partner. He also cited Section 47 of the Partnership Act, to contend that the liability continues even after the dissolution of the Partnership firm.

3. After hearing of the arguments of Shri Bharucha, the learned advocate, the Bench referred to its-own Order No. 145/87-WRB, dated 11-2-1987, copies of which were given to both sides and their comments were invited. In the aforesaid order the Bench had permitted the joint appeal filed by the Karta of the HUF and the HUF on the ground that the cause of action remains the same and both the Karta and HUF were imposed penalties under the single order of the Collector. Shri Bharucha contended that the principle laid down in the aforesaid order would be applicable to the facts of the present case. In this case, Shri S.K. Lakhani, one of the appellants in the joint appeal, is a partner of the firm, M/s. Universal Automobile & Ancillary Ind. The penalty was imposed on him because he happens to be the partner, managing the affairs of the firm, apart from a separate penalty imposed on the firm itself. Since the cause of action remains the same and the penalties have been imposed both on the individual partner as also on the partnership firm by a single order by the Collector, a joint appeal is permissible in terms of the ratio of the decision already taken by the Bench.

4. Heard Shri Mondal. He contended that the joint appeal, if permitted, should be verified by a partner apart from Shri S.K. Lakhani, on whom penalty has been

imposed. Shri Bharucha pointed out that this has been complied with.

5. After hearing both sides, we find that the cause of action remains the same which has given rise for the imposition of penalty on Shri S.K. Lakhani as a partner of the firm as well as on the firm M/s.

Universal Automobile & Ancillary Ind. Penalties on both the partner and on the firm are adjudged by the single order. This Bench, in its Order No. 145/87, had gone into the question of entertaining the joint appeal by the Karta of the Hindu Undivided Family and the Hindu Undivided Family in the context of the CEGAT Procedure Rules and the Provisions of the Civil Procedure Code and had laid down the principle that where the order appealed against is not a multiple order and the penalties have been imposed on account of the same cause of action, joint appeal would be permitted. We would like to respectfully follow this principle in this case in view of the factual position discussed above and allow the joint appeal filed by Shri S.K. Lakhani and M/s. Universal Automobile & Ancillary Ind. The stay application may be listed for hearing on merits on 22-11-1989. No fresh notice since both parties are present.

1. I have gone through the order proposed by Shri. R. Jayaraman, Member (Technical) and I would like to add the following: 2. The facts in brief are: the appellants firm was closed in March, 1986 and sold their plot. The Plant and Machinery was temporarily shifted to the premises situated at A-41 N.I.C.E. Satpur, Nasik, which belonged to one of the partners of the appellants' firm, Shri S.K.Lakhani. Thereafter the appellants found a site at Plot No. W-134-A, M.I.D.C. Ambad, Nasik. The Plant and Machinery, which was temporarily shifted to A-41 N.I.C.E. Satpur was transferred to Plot No. W-134-A, M.I.D.C. Ambad, Nasik.

3. On 24th January, 1987 the factory of the appellants at Plot No.W-134-A, M.I.D.C. Ambad, Nasik was visited by the Central Excise Officers and goods valued at Rs. 2,24,298.00, and records were seized by them. A show cause notice was issued to the appellants firm, and also to one of the partners, namely Shri S.K. Lakhani and various other firms.

4. In the show cause notice, it is proposed (1) to club the clearances of goods of the appellants firm and other units and deny the benefit of exemption notification (2) to confiscate the goods and (3) to impose a penalty.

5. On receiving the reply to the show cause notice, the Collector confiscated the goods and imposed a fine of Rs. 1.00 lakh in lieu of confiscation, imposed a penalty of Rs. 2.00 lakhs on the appellants firm and a penalty of Rs. 10,00,000/- on Shri S.K. Lakhani.

6. The question for consideration under the above circumstances is whether, the appellants firm, and the partner Shri S.K. Lakhani can jointly file a single appeal against the order of the Collector.

7. In order to consider the issue, it is necessary to refer to the relevant allegations in the show cause notice, and the finding of the Collector. The allegation in the show cause notice is : "That M/s. Premier Electronic Industries manufactured excisable goods at thier Factory premises, and cleared the same during the period from July, 1982 to 24th January, 1987, valued at Rs. 1,95,86,975.14 without payment of duty of Rs. 18,15,444.22 and also the goods seized from the factory premises of M/s. Universal Automobiles and Ancillary Industries on 24th January, 1987, valued at Rs. 2,24,299.00 without payment of duty." "M/s. Universal after the close of the factory in April 1986, cleared the goods worth over Rupees Fourteen Lakhs. Though the unit has no machinery, workers, power connection, and also the factory premises of its own till January 1987, to undertake the manufacture of any goods." He also found that "the goods were actually manufactured in the factory premises of M/s. Premier at Plot A-41 Satpur, Nasik. The Company M/s. Universal and its partner Shri S.K. Lakhani have therefore dealt with the goods which they knew were non-duty paid and were liable to be confiscated and accordingly committed an offence under Rule 209A of the C.E.S, Rules, 1944 punishable under the same Rule." 8. From the above, it is clear that the allegation is knowingly removing non-duty paid goods, by the firm and its partner. The Collector found that the allegation is substantiated. I may also point out that the Collector passed a single order. The cause of action leading to the imposition of penalty is "knowingly removing the non-duty paid goods", and the "seizure of the

same by the Central Excise Officers", in other words, the offence committed both by the firm and its partner is the same, namely violation of Rules, and is committed in the course of same transaction.

9. In this context we may usefully refer to Section 223 of the Criminal Procedure Code which provides for joint trial of several persons. The relevant provision reads as follows: Section 223. "The following persons may be charged and tried together, namely: (a) persons accused of the same offence committed in the course of the same transaction." Therefore under the Criminal Procedure Code, joint trial of accused is permissible provided the offence committed is the same, and is committed in the course of same transaction. When the joint trial is permissible, there is no reason why a joint appeal cannot be filed, by the aggrieved persons.

10. In my view, though the provisions of criminal procedure code are not appli-able the principle underlying Section 223 of the Criminal Procedure Code can be extended to the proceedings before the Tribunal as the present proceedings are quasi-judicial and there is no prohibition under the CEGAT Procedure Rules prohibiting the filing of joint appeals. As pointed out earlier, the offences alleged to have been committed is same, and the finding of the Collector is that both the appellant firm and the partner committed the offence under Rule 209A of the C.E.S.Rules. Therefore, I am of the view that a joint appeal both the firm and the partner can be filed.

11. This Tribunal has already expressed a similar view in its Order No.145/87, dated 11-2-1987 and while holding that a single joint appeal is maintainable, considered the principle underlying in order 2 rule 1 and other relevant provisions of Civil Procedure Code.

12. However, I find from the cause title that only M/s. Universal Automobiles and Ancillary Industries are figuring as appellants, and Shri S.K. Lakhani has not joined as one of the appellants. The firm as well as the partner should figure as appellants in the memorandum of appeal. I, therefore, direct the appellants to amend the cause title by adding the name of the partner Shri S.K. Lakhani.