

**IN THE HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

**TUESDAY, THE TWELFTH DAY OF NOVEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

**THE HONOURABLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HONOURABLE SRI JUSTICE J. SREENIVAS RAO**

CENTRAL EXCISE APPEALS NO: 94 OF 2007

Appeal filed under Section 35G of the Central Excise Act, 1944 against the Order dated 19.02.2007 passed in Appeal No. E/549/2005 on the file of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Bangalore preferred against the Order dated 27.01.2005 passed in Order in Appeal No. 3/2005 (H-IV) CE on the file of the Commissioner of Customs & Central Excise (Appeals - II), 7th floor, Central Revenue Buildings, L.B. Stadium Road, Basheerbagh, Hyderabad preferred against the Order dated 06.06.2003 passed in Sanction Order No. 07/2003-04 on the file of the Deputy Commissioner of Customs and Central Excise, Hyderabad 'M', Division Plot NO. 240, Opp. Hanuman Temple, Chinna Thokatta, New Bowenpally, Secunderabad.

Between:

M/s. Shanti Auto Pvt. Ltd., Represented by M.D., Plot no.1, Survey no.91, Brindavan Colony, Old Bowenpally, Hyderabad.

...Appellants/Appellants

AND

Commissioner of Customs and Central Excise, Hyderabad-IV
Commissionerate, Posnett Bhavan, Tilak Road, Ramkote, Hyderabad -
500001.

...Respondents

Counsel for the Appellant : Sri S. Krishna Murthy (Not present)

Counsel for the Respondent : Sri Dominic Fernandes, Senior SC for CBIC

The Court delivered the following: JUDGMENT

**THE HON'BLE THE CHIEF JUSTICE ALOK ARADHE
AND
THE HON'BLE SRI JUSTICE J. SREENIVAS RAO**

CEA No. 94 of 2007

JUDGMENT: (per the Hon'ble the Chief Justice Alok Aradhe)

None for the appellant.

Mr. Dominic Fernandes, learned Senior Standing Counsel appears for the respondent.

2. This appeal filed under Section 35G of the Central Excise Act, 1944, is directed against order dated 19.02.2007 passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal'). The following substantial question of law arises for consideration in this appeal.

“Whether the Customs, Excise & Service Tax Appellate Tribunal is justified in law in upholding the order of the Commissioner (Appeals) dated 27.01.2005 in Order-in-Appeal No.3/2005 (H-IV) CE.”

3. Facts giving rise to filing of the appeal in nutshell are that the appellant is a manufacturer of three wheeler auto

rickshaws for passengers and load carriers falling under Chapter Sub-Heading No.8703.00 and 8704.00 of the Central Excise Tariff Act, 1985 (hereinafter referred to as 'the 1985 Act'), respectively. The respondent received information that the appellant is manufacturing diesel autos and trolleys falling under Chapter Heading No.8703 of the 1985 Act and is clearing them without payment of duty. Thereupon, the Officer of Central Excise Division VII, Hyderabad, visited the factory of the appellant on 07.06.1996. On verification of the statutory records maintained up to 30.05.1996, it was found that one three wheeler diesel auto pickup van bearing Challan No.SA/0715/96 fitted with Greeves Engine No. FB 75807 was manufactured and ready for dispatch. However, the entry in respect of the aforesaid vehicle was not made in R.G.1 Register with an intention to remove the same without payment of duty. The Officers thereupon seized the said vehicle which was valued at Rs.68,000/-. On further verification of the invoices and other statutory records, it was found that the appellant has cleared different types of autos, trolleys bearing chassis No.676 to 714 (total 39 Nos.) valued at

Rs.17,86,000/- without payment of duty and without making entry in the statutory records.

4. It was also found that 56 number of autos and 9 trolleys valued at Rs.24,26,547/- and Rs.2,19,000/- respectively were cleared in a clandestine manner without payment of Central Excise Duty between August, 1995, and June, 1996. The appellant deposited a sum of Rs.3,00,000/- *vide* challan No.293 dated 10.06.1996 and a sum of Rs.3,69,998/- *vide* challan Nos.15 and 16 dated 16.11.1996 towards the amount due from it on account of Central Excise Duty. Thereupon, a show cause notice dated 27.11.1996 was issued to the appellant. The appellant by the aforesaid notice was asked to show cause as to why a sum of Rs.6,70,721/- be not recovered from it.

5. The Deputy Commissioner by an order dated 28.10.1997 confirmed the demand of Rs.6,70,721/- and adjusted the amount of Rs.6,69,998/- paid by the appellant towards the said demand and ordered for recovery of balance amount of

Rs.723/- apart from imposing a fine of Rs.10,000/- as well as penalty of Rs.25,000/- .

6. The appellant challenged the aforesaid order dated 28.10.1997 in the appeal. However, during pendency of the appeal, the appellant filed an application dated 05.11.1998 under Kar Vivad Samadhan Scheme (hereinafter referred to as 'the Scheme') claiming abatement of 50% of the duty of Rs.723/- as well as the amount of fine and penalty imposed vide order dated 28.10.1997. The appellant paid an amount of Rs.362/- being 50% of the balance amount of duty of Rs.723/- on 09.12.1998, to avoid fine and penalty. The Commissioner thereupon accepted the application made by the appellant under the Scheme and issued a certificate dated 04.01.1999 towards full and final settlement of arrears of tax under the Scheme.

7. The appeal preferred by the appellant was dismissed by the Commissioner of Customs & Central Excise (Appeals) by an order dated 27.01.2005 *inter alia* on the ground that the appellant itself had availed of the benefit of the Scheme.

8. The aforesaid order was challenged in an appeal before the Tribunal. The Tribunal by an order dated 19.02.2007 has *inter alia* noted that despite notice issued on several occasions to the appellant, the appellant did not appear before it. The Tribunal *inter alia* held that the order passed by the Commissioner (Appeals) does not suffer from any infirmity, as the appellant itself had opted for settlement under the Scheme and the amount was paid accordingly. The Tribunal therefore held that the question of seeking any reimbursement or refund of the amount does not arise. Accordingly, the appeal was dismissed.

9. Learned counsel for the respondent has submitted that the appellant voluntarily had opted for the Scheme and made payment under the Scheme. Therefore, the order passed by the Commissioner (Appeals) as well as the Tribunal does not call for any interference and the Tribunal is justified in upholding the order passed by the Commissioner (Appeals).

10. We have perused the record and heard the learned counsel for the respondent.

11. From the material available on record, it is evident that during pendency of the appeal against the order passed in original proceeding, the appellant with its eyes wide open had applied under the Scheme. Thereafter, the appellant paid the amount due under the Scheme and produced the certificate of payment. The Commissioner (Appeals) therefore was justified in dismissing the appeal preferred by the appellant on the ground that appellant is not entitled to challenge the order dated 28.10.1997. Despite several opportunities the appellant did not even appear before the Tribunal. The Appellate Tribunal by assigning valid and cogent reasons had affirmed the order passed by the Commissioner (Appeals). The orders impugned in this appeal do not suffer from any infirmity.

12. For the aforementioned reasons, substantial question of law framed by this Court is answered in the affirmative.

13. In the result, the appeal fails and is hereby dismissed.

Miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

Sd/- K. SRINIVASA RAO
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. The Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench at Bangalore.
2. The Commissioner of Customs & Central Excise (Appeals - II), 7th floor, Central Revenue Buildings, L.B. Stadium Road, Basheerbagh, Hyderabad.
3. The Deputy Commissioner of Customs and Central Excise, Hyderabad 'M', Division Plot NO. 240, Opp. Hanuman Temple, Chinna Thokatta, New Bowenpally, Secunderabad.
4. One CC to Sri S. Krishna Murthy, Advocate [OPUC]
5. One CC to Sri Dominic Fernandes, Senior SC for CBIC, Advocate [OPUC]
6. Two CD Copies

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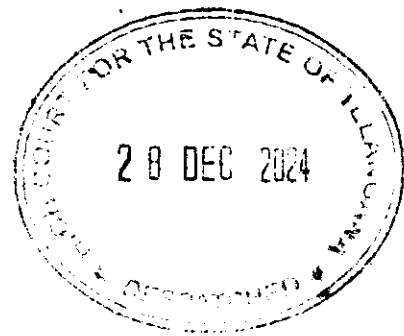
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HIGH COURT

DATED:12/11/2024

JUDGMENT

CEA.No.94 of 2007



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WITHOUT COSTS**

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