

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH**

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 60031 of 2023

[Arising out of Order-in-Appeal No. JNK-EXCUS-APP-88/22-23 dated 29.09.2022 passed by the Commissioner (Appeals), Central GST, Jammu]

M/s Vinayak Industries

1, SICOP Complex, Nihalpur,
Palli Morh, Kathua,
Jammu, J&K - 184143

.....Appellant

VERSUS

**Commissioner of Central Excise &
Customs, Jammu**

OB-32, Rail Head Complex,
Jammu, J&K - 180012

.....Respondent

APPEARANCE:

Present for the Appellant: Sh. Vijay S. Rane, Advocate

Present for the Respondent: Ms. Shivani (Supdt.), AR

CORAM:

HON'BLE Sh. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60068/2024

DATE OF HEARING: 22.02.2024

DATE OF DECISION: 22.02.2024

PER : S. S. GARG

The present appeal is directed against the impugned order dated 29.09.2022 passed by the Commissioner (Appeals) whereby the learned Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly stated facts of the case are that the appellant are engaged in the manufacture of 'Tin Containers' falling under Tariff Heading 73 of the First Schedule to the Central Excise Tariff Act, 1985. During the course of internal audit conducted by the Department, it was found that the appellant have not filed returns namely ER-4, ER-5, ER-6 and ER-7 for the period from February 2012 to March 2016; accordingly, a show cause notice was issued to the appellant on 23.04.2018 proposing to impose penalties amounting to Rs.96,000/- under Rule 12(6) and Rule 27 of the Central Excise Rules, 2002 and Rule 15A of the Cenvat Credit Rules, 2004 for non-filing of above mentioned returns. After following the due process, the Adjudicating Authority confirmed the demand of penalties of Rs.96,000/- put together for non-filing the returns cited supra. Aggrieved by the said order, the appellant filed appeal before the Commissioner (Appeals), who rejected their appeal and upheld the adjudication order. Hence, the present appeal.

3. Heard both the parties and perused the records.

4.1 The learned Counsel for the appellant submits that the impugned order is not sustainable in law and is liable to be set aside as the same has been passed without properly appreciating the facts and the law and binding judicial precedents.

4.2 He further submits that the penalties have been imposed by invoking the extended period of limitation without satisfying the

requirement of invoking the extended period of limitation as provided under Section 73, sub-section (4) of the Finance Act, 1994.

4.3 He further submits that the issuance of show cause notice after coming into force of CGST Act, 2017 is without jurisdiction because under the GST regime which was introduced w.e.f. 01.07.2017, the only saving clause is provided under Section 174 of the CGST Act, 2017, wherein the proceedings can continue under the new regime if the same is arising out of investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings etc and as such the saving clause has no applicability with regard to the present proceedings. He further submits that under Rule 27 of the Central Excise Rules, 2002, the maximum penalty provided for violation of the rules is to the extent of Rs.5000/- only, whereas in the present case, penalties of Rs.96,000/- have been imposed. In support of his contention, he relies on the decision of this Tribunal in the case of **Anil Products Ltd vs. CCE, Ahmedabad – 2011 (274) ELT 431 (Tri. Ahmd.)**.

5. On the other hand, the learned DR for the Revenue reiterates the findings of the impugned order and submits that the decision relied upon by the appellant in the case of **Anil Products Ltd (supra)** has been distinguished by the Tribunal in the case of **Buneesha Chem Pvt Ltd vs. CCE, Raigad – 2019 (370) ELT 533 (Tri. Mum.)**. She further submits that in the era of self assessment, it is the duty of the assessee to file the returns and non-filing of returns in time attracts the penalties.

6. After considering the submissions made by both the parties and perusal of the material on record, I find that it is necessary at this juncture to consider the provisions of Section 174(2)(e) of the CGST Act, 2017, which is reproduced herein below:

"Section 174(2)(e) - *affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed."*

7. Further, I find that as per this saving clause the proceedings can only be continued under the new regime if it is arising/emerging out of investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings etc. Further, I find that violation of non-filing of the returns under the existing law has not been saved under the present regime of GST. Further, I find that in the present case the period involved is February 2012 to March 2016, whereas the show cause notice was issued on 23.04.2018 which is beyond the period of limitation. In fact, neither in the show cause notice nor in the impugned order, the grounds for invoking the extended period of limitation have been discussed. Nothing emerges from the impugned order that the appellant have not filed the requisite returns with

intent to evade the payment of tax. Further, the decisions relied upon by the appellant as well as the respondent, are not strictly applicable in facts and circumstances of the present case.

8. In view of the discussion above, I am of the considered opinion that the imposition of penalties amounting to Rs.96,000/- is not sustainable and therefore, I set aside the impugned order by allowing the appeal of the appellant.

(Operative part of the order pronounced in the court)

(S. S. GARG)
MEMBER (JUDICIAL)