(2014) 02 MAD CK 0107

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 1219 of 2005

C.C.E. APPELLANT

Vs

Sree Ramakrishna Cattle Feed Manufacturers RESPONDENT

Date of Decision : 10-02-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G

Citation : (2014) 308 ELT 470

Hon'ble Judges : G. Chockalingam, J;A. Selvam, J

Bench : Division Bench

Judgement

A. Selvam, J.—This Civil Miscellaneous Appeal has been directed against the Final Order dated 12-8-2005 passed in Final Order No. 1153 of 2005 in Appeal No. E/3143 of 1998 by the CESTAT. The respondent has been engaging in manufacturing cattle feed by way of using molasses and the same is exempted from Central Excise Duty, but the respondent has used rice bran for the purpose of making the same and distributed finished goods without paying Central Excise Duty. Under the said circumstances, a show cause notice dated 10-11-1997 has been issued whereby directed the respondent to pay Central Excise Duty as mentioned therein for the period covered from 21-5-1991 to 24-7-1996. The demand made the Department has been upheld in Order-in-Original No. 9 of 1998 and the same has been challenged before the respondent before the CESTAT.

2. The CESTAT, after considering the rival submissions put forth on either side, has come to a definite conclusion to the effect that in the show cause notice, same statements alleged to have been given by the assessee earlier are referred to, but the same have not been supplied to the assessee. Under the said circumstances, the CESTAT has set aside the entire demand made by the Department. Against the order passed by the CESTAT, the present Civil Miscellaneous Appeal has been preferred at the instance of the Department as appellant.

3. On the side of the appellant, the following substantial questions of law have been raised for consideration:-

"(a) Whether the Appellate Tribunal has committed an error of law that there is negation of justice to the assessee and infirmity in the show cause notice on the basis that statement of purchaser of duty free molasses (Shri Anandrajan) obtained in another case registered against the same assessee has not been figured in the list of documents relied upon in the impugned show cause notice?

(b) Whether the Appellate Tribunal is correct in holding that the departmental claim that the assessee has given admission statement, has not been proved, inasmuch as that the department has proved with ample evidences that the assessee has not used the duty free molasses for the intended purpose of manufacturing cattle feed in his factory, and the department has only claimed that the party has admitted the mistake in the previous case registered against the same assessee, and the department has not claimed that the party has admitted the removal of duty free molasses in the present case?"

4. The learned counsel appearing for the appellant has repeatedly contended that in the show cause notice dated 10-11-1997, the statements alleged to have been given by the assessee have been referred to and in fact copies of the same have also been supplied to assessee. Apart from the statements alleged to have been given by the assessee in respect of the present case, the statements alleged to have been given by the assessee earlier have also been mentioned in the show cause notice and the same are totally immaterial for the purpose of deciding the present lis. But the CESTAT, without considering the nature of demand as well as contention put forth on the side of the assessee, has erroneously set aside the order passed in Order-in-Original and therefore, the order passed by the CESTAT is liable to be set aside.

5. The learned counsel appearing for the respondent has contended that as per Section 35G of the Central Excise Act, 1944, against the order passed by the Appellate Tribunal with regard to present dispute, no appeal would lie before the High Court and proper appeal should be filed before the Apex Court and therefore, the present Civil Miscellaneous Appeal is not legally maintainable.

6. In order to meet out the legal point raised on the side of the respondent, the learned counsel appearing for the appellant has contended that the Appellate Tribunal has not at all decided the present matter on merits and it has simply rejected the entire demand of the Department on the basis of non-furnishing of copies of statements alleged to have been given by the assessee. Under the said circumstances, Section 35G of the said Act is not applicable and therefore, the order passed toy the CESTAT is liable to be set aside.

7. As rightly pointed out by the learned counsel appearing for the respondent, as per Section 35G of the said Act in respect of the present matter against the order passed by the Appellate Tribunal an appeal shall lie before the Apex Court. The Appellate Tribunal, in the present case, has not decided the same on merits. It

has simply rejected the demand of the Department on technical ground to the effect that the copies of statements alleged to have been given by assessee earlier (mentioned in show cause notice, dated 10-11-1997) have not been supplied.

8. Considering the fact that order in question is not based on merits, it is purely on the basis of technical point, this Court is of the view that the present Civil Miscellaneous Appeal is legally maintainable.

9. It has already been pointed out that the CESTAT has not at all decided the present dispute on merits. Since the CESTAT has not decided the present matter on merits, this Court is of the view to set aside the order passed by the CESTAT in Final Order No. 1153 of 2005 and to remit the matter to the file of the CESTAT. Since the matter is liable to be remitted to file of the CESTAT, the substantial questions of law raised on the side of the appellant need not be decided and altogether the present Civil Miscellaneous Appeal is liable to be allowed. In fine, this Civil Miscellaneous Appeal is allowed without costs. The order passed in Final Order No. 1153 of 2005 in Appeal No. E/3143 of 1998 dated 12-8-1998 by the CESTAT is set aside and Appeal No. E/3143 of 1998 is remitted to its file. Both parties are entitled to adduce additional evidence. The Appellate Tribunal is directed to decide the real dispute in question and pass orders on merits.

