(2012) 06 CHH CK 0007

In the Chhattisgarh High Court

Case No : C.E.A. No. 2 of 2005

Commissioner of C. Ex. and Cus., Raipur — APPELLANT

Vs

National Cement Corporation — RESPONDENT

Date of Decision : 26-06-2012

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35G

Citation : (2012) 286 ELT 21

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Smiti Sharma, for the Appellant; Sameer Oraon, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, J.—Heard. This is an appeal filed by the Commissioner of Central Excise (Revenue) u/s 35G of the Central Excise Act against the order dated 9-11-2004 passed by the Customs, Excise & Service Tax Appellate Tribunal, (for short hereinafter called "The Tribunal") in Order No. 768/04-NR-C.

2. By impugned order, the Tribunal dismissed the appellant''s appeal essentially by placing reliance on one decision of the Tribunal reported in 2000 (71) ECC 639

3. So the short question which arises for consideration in this appeal is whether the Tribunal was justified in dismissing the appellant''s appeal and if not, then what orders are called for?

4. This appeal was admitted for final hearing on following substantial question of law :-

Whether in the facts of the case, a manufacturer is entitled to exemption under the Notification No. 1/1993-C.E., dated 28-2-1993 and also under the Modvat scheme?

5. The facts of the case are short and they can be taken note of by reading the impugned order itself which is equally short. The order of the Tribunal is

therefore quoted infra.

1. The Revenue has come up in Appeal against Order-in-Appeal No. 116/04 dated 24-5-2004 vide which the Commissioner (Appeals) has held that the respondents M/s. National Cement Corporation can avail of MODVAT credit of duty paid on inputs and also avail full duty exemption in respect of some other products.

2. We heard Shri D.N. Choudhary, learned Senior Departmental Representative for Revenue and Shri Bipin Garg, learned Advocate for the respondents. The issue involved has been settled by the Larger Bench of the Tribunal in the case of 2000 (71) ECC 639 wherein it has been held that "subject to the reversal of the MODVAT credit taken with regard to the inputs which were utilised for the manufacture of duty free goods, the manufacturer could avail of the MODVAT credit as well as full duty exemption under the applicable small scale exemption Notification with regard to the same specified goods." Following the ratio of the said decision we dismiss the Appeal filed by Revenue."

6. As would be clear by mere reading of the impugned order, the Tribunal dismissed the appellant''s appeal only by placing reliance on the earlier Larger Bench decision rendered by the Tribunal in the case of Franco supra.

7. When we read the decision of Franco supra, then we find that it was based on the earlier decision of the Tribunal reported in 1993 (63) ELT 759 . Indeed the Tribunal in Franco case held that since the view taken by the Tribunal in Faridabad Tools'' case is upheld by the Supreme Court because Revenue''s appeal arising therefrom was dismissed and hence Tribunal''s view taken in Faridabad Tools has attained finality and has to be followed. This is what the Tribunal while deciding the case of Franco observed and held.

4. Insofar as the availing of Modvat and the full exemption under small scale exemption Notification, on different specified goods is concerned, the matter is already covered by the Tribunal''s decision in the case of 1993 (63) ELT 759 , which has since merged with the order of the Hon''ble Supreme Court. The Hon''ble Supreme Court has confirmed the view taken by the Tribunal by dismissing the Revenue''s Civil Appeal, as mentioned in the Court Room Highlights of 1996 (82) E.L.T. A149 Thus, the view taken by the Tribunal that the full exemption under small scale exemption notification on the one hand, and the Modvat credit on the other hand, could be availed for simultaneously by a manufacturer, but on different goods, has been confirmed by the Supreme Court by virtue of doctrine of merger.

8. It is not in dispute that this very issue at a later date came up for consideration before the Supreme Court in the case reported in Commissioner of C. Ex., Ahmedabad Vs. Ramesh Food Products, wherein, their Lordships noted that there were two views of the Tribunal on this very issue namely the one taken in Faridabad Tools'' case and the other taken in the case of 1995 (75) ELT 202 Their Lordships held that the view taken in Kamani is the correct view and

not the one taken in Faridabad Tools'' case. Their Lordships, therefore, overruled the view taken by the Tribunal in Faridabad Tools'' case holding it to be the incorrect one and upheld the view of the Tribunal taken in the case of Kamani. This is what their Lordships held in the case of Ramesh Food.

11. The view expressed in Kamani Foods'' case (supra) is irreversible and projects a correct analysis of the relevant aspects. We affirm the view. Contrary view taken in Faridabad Tools'' case (supra) is not correct.

9. In our view, in the light of the decision of the Supreme Court reported in Ramesh Food Products, it is now the law laid down that the view taken by the Tribunal in Kamani''s Case is the correct one and has to be applied while deciding the issue involved in any case being the correct view. Indeed in such circumstances, it has now become the view of the Supreme Court on the issue involved.

10. It is not in dispute that the Tribunal in this case while dismissing the appellant''s appeal had relied upon Franco''s case and the Tribunal while deciding the case of Franco had relied upon the view taken by the Tribunal in Faridabad Tools'' case. Now since the view taken by the Tribunal in Faridabad Tools'' case is held as no longer good law and stands overruled in Ramesh Food''s case by the Supreme Court and hence, the impugned order too becomes bad in law and can not be upheld. In other words, now the issue involved in the case has to be decided keeping in view the law laid down in Ramesh Food i.e. Kamani''s Food case.

11. In our opinion, since the Tribunal did not decide the issue in the light of law laid down in Ramesh Food i.e. in the light of the view taken in Kamani''s case and hence, we consider it apposite to remand the case to the Tribunal for deciding the appeal of the appellant afresh on facts and then pass appropriate orders.

12. The appeal thus succeeds and is allowed. The impugned order is set aside. The appeal, out of which, this appeal arises is restored to its file. It be now decided afresh in the light of what we have held supra on merits in accordance with law, within six months from the date of parties appearance. Parties to appear before the Tribunal on 23-7-2012 and produce this order before the Tribunal to enable the Tribunal to decide the appeal as directed. No cost.

