**(2014) 02 MAD CK 0064**

**In the Madras High Court**

**Case No :** Civil Miscellaneous Appeal (MD) No. 1074 of 2009

Commissioner of C. Ex. APPELLANT

Vs

Sundaram Industries Ltd. RESPONDENT

**Date of Decision :** 04-02-2014

**Acts Referred:**

**Citation :** (2014) 310 ELT 482

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

**Bench :** Division Bench

## Judgement

A. Selvam, J.—The Final Order, dated 26-7-2007 passed in Final order No. 926 of 2007 in Appeal No. E/979/2005 by the CESTAT is being challenged in the present Civil Miscellaneous Appeal. The respondent is a manufacturer of moulded rubber products. During the period from July 2003 to March 2004, the respondent has availed CENVAT credit facilities. Under the said circumstances, the show cause notice in question has bean issued on the ground that even waste materials would subsequently be converted into goods and therefore, the respondent is not entitled to avail CENVAT credit facilities in respect of those goods. The claim put forth on the side of the Department has been upheld in Order-in-Original, dated 25-4-2005. The order passed in [order-in-original] has been agitated before the Commissioner of Appeals. The Commissioner of Appeals has upheld the order passed in Order-in-Original and the same has been challenged before the CESTAT in Appeal No. E/979/2005.

2. The Appellate Tribunal, after considering the rival existing facts, has simply allowed the appeal and thereby set aside the orders passed by the Authorities. Against the order passed by the CESTAT, the present Civil Miscellaneous Appeal has been preferred.

3. At the time of admitting the present Civil Miscellaneous Appeal, the following substantial question of law has been settled for consideration:-

"Whether the CESTAT is correct in applying the ratio of Tribunal Orders where the facts involved are entirely distinct and different from the facts of the instant case?"

4. The learned counsel appearing for the appellant has contended that the specific contention put forth on the side of the Department is that the respondent has used to convert scrap materials and waste goods subsequently into finished goods. Under the said circumstances, the respondent is not entitled to avail CENVAT credit facilities in respect of those goods and even though such contention has been put forth on the side of the Department, the Appellate Tribunal has not at all discussed the same and it has simply allowed the appeal by way of following certain decisions and therefore, the order passed by the Appellate Tribunal is liable to be set aside.

5. Per contra, the learned counsel appearing for the respondent has contended that the Appellate Tribunal, after considering the earlier proceedings as well as orders passed thereon, has rightly allowed the appeal in question and therefore, the orders passed by the Appellate Tribunal does not require any interference.

6. As rightly pointed out on the side of the appellant, the Appellate Tribunal is bound to decide the rival facts put forth on either side. But, in the instant case, even though a specific contention has been put forth on the side of the Department to the effect mentioned supra, the Appellate Tribunal has not at all considered the same. The Appellate Tribunal has simply quoted certain decisions and allowed the appeal and thereby, set aside the orders passed by the Authorities. Since the Appellate Tribunal is also a fact finding authority and since the same has not decided the facts put forth on the side of the Department, this Court is of the view that the impugned order passed by the Appellate Tribunal is not factually and legally sustainable. Under the said circumstances, the matter is liable to be remitted to the file of the Deputy Commissioner of Central Excise (Original Authority), Madurai. Since the matter is liable to be remitted as stated above, the substantial question of law settled 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 and the orders passed in Order-in-Original, Order-in-Appeal by the Commissioner of Appeals and order passed in Appeal No. E/979/2005 by the CESTAT are set aside and the matter is remitted to the file of the Deputy Commissioner of Central Excise (Madurai). The Deputy Commissioner of Central Excise (Madurai) is directed to decide the rival facts to be put forth on either side and pass suitable orders.