(2016) 09 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. Nos. 38, 40 and 42 of 2015 (O&M)

Commissioner of C. Ex. & S.T. — APPELLANT

Vs

Jai Jwala Processors — RESPONDENT

Date of Decision : 28-09-2016

Acts Referred:

Citation : (2017) 345 ELT 635

Hon'ble Judges : Rajesh Bindal and Darshan Singh, JJ.

Bench : Division Bench

Advocate : Shri Sourabh Goel, Advocate, for the Appellant; Shri Amrinder Singh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Bindal, J.—This order will dispose of three Central Excise Appeals Bearing Nos. 38 of 2015, 40 of 2015 and 42 of 2015 as all the appeals have arisen out of common order passed by the Customs, Excise and Service Tax Appellate Tribunal (for short ''the Tribunal''). In CEA No. 38 of 2015, the issue raised is regarding valuation of goods and rate of duty calculated whereas in CEA Nos. 40 and 42 of 2015, the issue is regarding levy of penalty on the partners of the firm.

2. The revenue has filed the appeals raising the following substantial questions of law :-

"(i) Whether the CESTAT is correct in excluding the value of Corrugated Boxes, cleared by the respondent from the computation of aggregate value of cleared Boxes for availing the SSI exemption limit, when the Corrugated Boxes had not been exported but cleared for Home Consumption to manufacturers, who had further used the same in packing in the goods exported by them?

(ii) Whether the CESTAT is correct in relying upon order of Tribunal in the case of M/s. Universal Packaging v. Commissioner of Central Excise, Mumbai-V, in which the facts of the case are totally different from the case of respondent?

(iii) Whether the CESTAT is correct in relying upon the decision of Tribunal in the case of M/s. Universal Packaging v. Commissioner of Central Excise, Mumbai-V, which has not been accepted by the department and the appeal of the department is pending before the Hon''ble Supreme Court?

3. Learned counsel for the respondent, at the very outset, submitted that for the purpose of deciding the appeals filed by the respondent therein, the Tribunal placed reliance upon an order passed by the Mumbai Bench of the Tribunal in the case of Universal Packaging v. CCE, Mumbai-V, 2011 (264) E.L.T. 147 (Tri.-Mum.) which was upheld by Bombay High Court in CCE, Mumbai-V v. Universal Packaging, 2013 (292) E.L.T. 191 (Bom.).

4. He further submitted that identical issue subsequently came up for consideration in Madras High Court in Commissioner of C. Ex., Chennai-II v. Vadapalani Press, 2015 (320) E.L.T. 238 (Mad.) where in a case involving identical facts requiring interpretation of Notification No. 8/2002-C.E., dated 1-3-2002, it was opined that the issue involved being regarding valuation of goods and the rate of duty, the appeal was not maintainable before the High Court. The submission is that in view of the order passed by the Bombay High Court dealing with the issue in favour of assessee and the order passed by Madras High Court opining that appeal was not maintainable before the High Court, the issue being related to valuation and rate of duty, the present appeals before this Court are not maintainable.

5. He further submitted that Revenue''s appeal in the case of Universal Packaging''s case (supra), is pending before the Hon''ble Supreme Court.

6. Learned counsel for the appellant did not dispute the aforesaid factual position especially the fact that Madras High Court opined that appeal before the High Court under similar circumstances requiring interpretation of notification granting SSI exemption limit was not maintainable as the issue was related to valuation of goods and the rate of duty.

7. After hearing learned counsel for the parties and the submissions noticed above and following the view expressed by Madras High Court, we find that the present appeals are not maintainable before this Court. Accordingly, the same are dismissed. However, with liberty to the appellant to avail of appropriate remedy in accordance with law.