(2015) 06 MAD CK 0566

In the Madras High Court

Case No : C.M.A. Nos. 2199-2201 of 2008

Commissioner of Central Excise APPELLANT

Vs

CESTAT RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Citation : (2015) 323 ELT 77

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : Mohanamurali, for the Appellant; R. Parthasarathy for Lakshmi Kumaran, Advocates for the Respondent

Judgement

R. Sudhakar, J—The Tribunal, while allowing the appeal filed by the assessee, dismissed filed by the Revenue and aggrieved against the said order [2007 (213) E.L.T. 81 (Tribunal)], the appellant/Revenue is before this Court by filing the present appeals. Vide order dated 1-8-2008, this Court, while admitting the appeals, framed the following substantial question of law for consideration:--

"Whether the CESTAT was right in setting aside all the orders in original entirely by extending the benefit to the clearance of yarn also without payment of duty when no permission was obtained from the jurisdictional Assistant Commissioner nor the procedure under Rule 19 of Central Excise Rules, 2001 read with Notification No. 43/2001-C.E. (N.T.), dated 20-6-2001 was followed by M/s. Loyal Textile Mills Ltd.?"

The facts, in a nutshell, are as hereunder:--

"There are two units, viz., Loyal Super Fabrics (Unit-I) and another one Loyal Textile Mills Ltd. (Unit-II). Yarn and grey fabrics, on permission, were sought to be removed from Unit-II to Unit-I for processing and return to Unit-II for export as yarn or fabrics. For the said process, the assessee claimed the benefit of Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001. Since department was of the view that the benefit of notification is not applicable to the assessee, a show cause notice was issued demanding duty contending that no permission was sought for before sending the fabrics from one unit to the other. After receipt of reply, the adjudicating authority held that the assessee is not entitled to the benefit of Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001. Accordingly, order was passed demanding duty along with interest under Section 11AB of the Central Excise Act and penalty was also levied under Rule 25 of the Central Excise Rules, 2002."

2. Against the said order, both the assessee and the Revenue filed appeal before the Tribunal. While appeal was filed by the assessee against confirmation of demand and penalty, the Revenue preferred appeal against that portion of the order by which for one of the period, penalty was dropped. The Tribunal, on considering the facts, taking note of the permission granted by the jurisdictional Assistant Commissioner, came to hold that the requirement of law has been complied with and in Para 3 of the order held that the procedure prescribed has been followed and held that the removal of processed fabrics by the assessee without payment of duty was in order. The Tribunal primarily went on the interpretation of the word "procured" as set out in Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001 and allowed the appeal in favour of the assessee against which the present appeals are filed by the appellant/Revenue.

3. Heard the learned standing counsel appearing for the appellant/Revenue and the learned counsel appearing for the 2nd respondent/assessee and perused the materials available on record.

4. Even at the outset, this Court is of the considered opinion that the matter requires to be remanded on a short question of fact and there is no need for this Court to give a finding on the above question of law. As is evident from the order of the Tribunal, on the basis of the pleading of the respondent, which has taken a plea before the Tribunal that on the strength of the permission granted to Unit-II by the jurisdictional Assistant Commissioner, which was communicated to Loyal Textile Mills Ltd., vide letter dated 30-10-2001 by the Superintendent of Central Excise, the assessee has been enjoying the benefit of Notification No. 43/2001-C.E. (N.T.). To support the said stand, the letter of the Superintendent of Central Excise dated 30-10-2001 has been placed on record. For better clarity, the said letter is extracted hereinbelow:--

"Please refer to your letter dated 15-10-2001 on the above subject.

In this regard, the Assistant Commissioner of Central Excise, Kovilpatti has permitted you to clear grey fabric without payment of Central Excise Duty to Loyal Super Fabrics Ltd., Cuddalore, for further processing of bleaching/dying and get back the processed fabrics without payment of Central Excise duty for garment manufacturing and export from your Mills. In this connection the Assistant Commissioner of Central Excise, Kovilpatti Division has instructed you to follow the procedure laid down under Rule No. 19 of Central Excise (No. 2) Rules, 2001 read with Notification No. 43/2001 dated 26-6-2001."

5. Though such a letter forms part of the order of the Tribunal, there appears to be no offense taken by the Department in the present appeal so far as it relates to the said issue. However, the only plea that is taken is that no permission was sought for and granted to the assessee so far as yarn is concerned. This is despite the fact that a specific plea has been taken by the 2nd respondent/ assessee in the appeal before the Tribunal. A copy of the said letter addressed by the Superintendent of Central Excise to the assessee has been placed before this Court, which has also been recorded by the Tribunal in its order. Though, the said letter was before the Tribunal and forms part of its order, however, this question of fact, which is disputed by the Revenue, has not been addressed by the Tribunal. Once a finding is recorded by the Tribunal on facts, it is supposed to address each and every issue that is placed before it by the parties on such fact. As to the authenticity of the letter written by the Superintendent of Central Excise to the assessee granting permission has to be necessarily addressed by the Tribunal with regard to the claim of the assessee that in view of the permission obtained by them through the said letter, they availed the benefit of the Notification No. 43/2001-C.E. (N.T.), dated 26-6-2001.

6. Since the said question has not been answered by the Tribunal, this Court feels that the matter has to be remanded to the Tribunal to decide the effect of the permission by the jurisdictional Assistant Commissioner for clearance of yarn, consequently, relief can be considered in the light of the earlier decision of the Tribunal in the case of Modern Mills Ltd. v. Collector [1996 (82) E.L.T. 90] on which reliance has been placed by the Tribunal. In such view of the matter, these appeals are disposed of remanding the matter to the Tribunal in terms above. The Tribunal shall go into the above question of fact and law in deciding the appeals. In the circumstances of the case, there shall be no order as to costs.

