(2014) 01 MAD CK 0241

In the Madras High Court

Case No : Civil Miscellaneous Appeal (MD) No. 1354 of 2009

Commr. of C. Ex. APPELLANT

Vs

Venkatesa Paper and Boards Ltd. RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 306 ELT 359

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

Bench : Division Bench

Judgement

A. Selvam, J.—The present Civil Miscellaneous Appeal has been directed against the Final Order passed in Appeal No. E/45/2003, dated 26-5-2009 in Final Order No. 615 of 2009, by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai [2009 (247) E.L.T. 384 (Tri.-Chen.)]. The respondent has been doing the business of manufacturing materials relating to newsprint. The respondent is having a similar unit in Madathukualam and the same has been notified under Newsprint Control Order, 1962 and as per Schedule I of the Newsprint Control Order, 1962 the said unit is exempted from paying Central Excise Duty. But the present respondent is a distinct unit, even though identical work is being carried on has not been notified under the Newsprint Control Order, 1962. Under the said circumstances, two show cause notices, dated 5-7-2001 and 8-3-2002 have been issued with regard to different periods and thereby directed the respondent to pay the respective amount mentioned therein as Central Excise Duty. The said show cause notices have been upheld in Order-in-Original, dated 7-2-2002 and the same has been challenged in Order-in-Appeal No. 170/2002 (MDU)(ADK) before the Commissioner of Appeals, Tiruchirappalli. The Commissioner of Appeals, Tiruchirappalli has allowed the same and subsequently, the Department has preferred Appeal No. E/45/2003 before the CESTAT and the CESTAT has confirmed the order passed by the Commissioner of Appeals. Against the final order passed by the CESTAT, the present Civil Miscellaneous Appeal has been preferred at the instance of the Department as appellant.

2. Even though the respondent has been served with summons, appearance has not bean made. Under the said circumstances, the present Civil Miscellaneous Appeal is disposed of on merits on the basis of the contention put forth on the side of the appellant/department.

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

"(i) Whether in the facts and circumstances of the case as discussed above the CESTAT is correct in holding that the order dated 3-8-1993 issued under this Newsprint Control Order, 1962 is applicable to the respondent''s mill unit-II started during the year 2000 for availing the benefits of Notification No. 23/98-C.E., 1-8-1998?

(ii) Whether the orders issued under the Newsprint Control Order, 1962 specifying a mill producing newsprint would automatically cover the other units of the same manufacturer in the absence of specific statutory provisions for the same and if so whether the authorities exercising jurisdiction under the Newsprint Control Order, 1962 are empowered to issue an order in general terms for a manufacturer instead of individual mills under the said Control Order?"

4. The learned counsel appearing for the appellant has contended that only with regard to first unit of the respondent which situates in Madathukulam, necessary exemption has been given from paying Central Excise Duty on the ground that the same has been properly notified under the Newsprint Control Order, 1962. But the present unit has not at all been notified. Under the said circumstances, the notification granted to the first unit cannot be extended to the present unit and due to that show cause notices have been issued with regard to different period and both the Commissioner of Appeals as well as the CESTAT have erroneously given identical findings to the effect that since the first unit as well as present unit of the respondent have been doing identical work with regard to newsprint materials, the present respondent is also entitled to get exemption from paying Central Excise Duty and the identical findings given by the Authorities below are totally erroneous and the same are liable to be set aside.

5. For considering the submission made on the side of the appellant/Department, we have to look into the following documents.

6. On 3rd August, 1993 an order has been passed, wherein it is mentioned that Sri Venkatesa Paper and Boards Limited, Madathukulam District, Dindigul Anna, Tamil Nadu as mills producing newsprint. Therefore, it is quite clear that the first unit of the respondent has been properly notified. On 1-8-1996, a notification has been issued, wherein it is mentioned as follows :-

"In exercise of the power conferred by Note 3 to Chapter 48 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986), the Central Government, hereby defines newsprint for the purposes of the said Chapter 48, as paper of a kind,

(a) intended for the printing of newspapers; and

(b) manufactured by a manufacturer of newsprint specified under Schedule I of the Newsprint Control Order, 1962, and supplied against a purchase order placed upon such manufacturer by a newspaper which is registered by the Registrar of Newspapers far India under the provisions of the Press and Registration of Books Act, 1867 (25 of 1867)."

7. In Newsprint Control Order, 1962 clause (e), it is mentioned that "newsprint means paper of any of the descriptions specified in Schedule 1 used for printing and shall include odd sized newsprint [whether produced indigenously by any mill as specified in item 3 of Schedule I or imparted and certified to be as such by the Controller".

8. From the cumulative reading of the documents referred to supra, it is made clear that even though identical works are being carried on if there are two units the same must be separately and distinctly notified as per Schedule I of the Newsprint Control Order, 1962.

9. It is an admitted fact that the respondent are having two units in the same place. With regard to first unit necessary notification has been made as per Newsprint Control Order, 1962 but with regard to second unit (the present respondent) no ouch separate order has been passed with regard to notification.

10. The sum and substance of the claim of the Department is that the respondent, has not been notified as per the Newsprint Control Order, 1962 and therefore, the respondent is not exempted from paying Central Excise Duty.

11. Both the Commissioner of Appeals and the CESTAT have uniformly found that since primary unit (unit No. 1) of the respondent has been manufacturing materials with regard to newsprint and since the second unit has also been doing the very same thing, the second unit need not get any separate or distinct exemption and ultimately rejected the claim of the Department.

12. At this juncture, it would be more useful to look into the decision reported in Novopan India Ltd., Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad, , wherein the Hon''ble Apex Court has observed as follows :--

"Exemption being in the nature of exception to be construed strictly at the stage of determination whether assessee falls within its terms or not and in case of doubt or ambiguity, benefit of it must go to the State. But once the provision is found applicable to him, full effect must be given to it."

13. It is an admitted that if any Mill or Industry deals with manufacturing of newsprint material, the same can very well get exemption after getting proper notification under the Newsprint Control Order, 1962. The claim of the appellant/ Department is based upon the fact that the second unit of the respondent has not been notified as per Newsprint Control Order, 1962. Only with regard to first unit proper notification has been obtained.

14. Both the Commissioner of Appeals as well as CESTAT have given identical

findings to the effect that both the units have been engaging in manufacturing same set of products with regard to newsprint. Even though the second unit has not been notified, the same is entitled to get very same exemption which is available to the first unit.

15. It has already been pointed out that for getting exemption from paying Central Excise Duty each unit must be separately or distinctly notified under the Newsprint Control Order, 1962 and admittedly, the respondent has not been notified under the said order. As stated in many places, both the Authorities have given identical findings to the effect that both units are doing identical work and therefore the second unit (respondent) need not to get notification separately.

16. Since for getting exemption from paying Central Excise Duty notification under Newsprint Control Order, 1962 is very much essential, mere doing of identical works is not at all sufficient for getting exemption. Therefore, the concurrent views expressed by the Commissioner of Appeals as well as the CESTAT are not factually and legally correct and all the substantial questions of law settled in the present Civil Miscellaneous Appeal are having substance 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 by the Commissioner of Appeals, Tiruchirappalli and the Final Order passed in Final Order No. 615 of 2009 in Appeal No. E/45/2003 by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai are set aside and the order passed in Order-in-Original is restored.

