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(2015) 02 RAJ CK 0306

In the Rajasthan High Court

Case No : Central Excise Appeal No. 10 of 2010

Mangalam Cement Ltd. APPELLANT

Vs

Commissioner of C. Ex., Jaipur-I RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Finance Act, 1994 — Section 70, 71, 73

Citation : (2015) 40 STR 461

Hon'ble Judges : Sunil Ambwani, Actg. C.J. and Prakash Gupta, J.

Bench : Division Bench

Advocate : Sanjay Jhanwar, for the Appellant; Vinay Mathur, for the Respondent

Judgement

1. In this Central Excise Appeal filed under Section 35G of the Central Excise Act, 1944, Mangalam Cement Limited is aggrieved by an order dated 30-5-2007 [, 2007 (7) S.T.R. 673 (Tri.-Del.)] passed by Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi, by which the appeal of the respondent-Department was allowed. However, the penalty in view of the fact that the assessee had pursued the matter in the writ petitions before Hon''ble Supreme Court, was waived. The amount under demand has been deposited, and thus, this appeal, is confined only for interest.

2. The Tribunal has, in its judgment under challenge, considered the judgment in Commissioner of Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd., and distinguished it on the ground that after the decision in Gujarat Ambuja Cements Ltd. and Another Vs. Union of India (UOI) and Another, , the subsequent decision in L.H. Sugar Factories Ltd., is relevant only in the context of law, as it stood prior to the validating provisions, the constitutionality of which was upheld by the Hon''ble Supreme Court in Gujarat Ambuja Cement Ltd. (supra).

3. We find substance in the contention raised by learned counsel appearing for the appellant, that in the present case, the relevant date, as defined in sub-section (6) of Section 73 had to be with reference to Section 71A, and not under

Section 71 . In the present case, the appellant is a ''service recipient'', and under Rule 2(d)(xii), it was liable to pay service tax for the period 16-11-1997 to 2-6-1998. The provision was struck down, on which a retrospective amendment was made, which was held valid by the Supreme Court in Gujarat Ambuja Cement Ltd. (supra).

4. For the relevant period in the present case, the appellant, as an assessee, was required to file return under Section 71A, and not under Section 71 , and thus, the period of show cause notice had to be calculated from the date, under Section 71A, and not Section 71 .

5. In L.H. Sugar Factories Ltd. (supra), the Supreme Court held as follows:-

"2. Learned counsel for the parties have drawn our notice to the relevant provisions of the Finance Act as it stood in the year 1994 and thereafter as it stood after the various amendments to the Act, in subsequent years. Having considered the relevant provisions of the Act, the Tribunal has, inter alia, recorded the following conclusion:

"The above would show that even the amended Section 73 takes in only the case of assessees who are liable to file return under Section 70 . Admittedly, the liability to file return is cast on the appellants only under Section 71A. The class of persons who come under Section 71A is not brought under the net of Section 73 . The above being the position show cause notices issued to the appellants invoking Section 73 are not maintainable."

3. We entirely agree with the conclusion arrived at by the Tribunal. We find no merit in these appeals and the same are accordingly dismissed. No order as to costs."

6. The judgment in Commissioner of Central Excise, Meerut-II v. L.H. Sugar Factories Ltd. (supra), was followed by the Supreme Court in Commissioner of Central Excise, Vadodara-I Vs. Gujarat Carbon and Industries Ltd., , and in which, it was held in Paragraphs 8 & 9, as follows:-

"8. It is to be noted that in an identical case in Commissioner of Central Excise, Meerut-II Vs. L.H. Sugar Factories Ltd., ; this Court agreed with similar conclusions of the Tribunal. In the, said case, the conclusions of the Tribunal were as follows:

The above would show that even the amended Section 73 takes in only the case of assessees who are liable to file return under Section 70 . Admittedly, the liability to file return is cast on the appellants only under Section 71A. The class of persons who come under Section 71A is not brought under the net of Section 73 . The above being the position show cause notices issued to the appellants invoking Section 73 are not maintainable.

9. In view of what has been stated in L.H. Sugar''s case (supra) we do not find any merit in the present appeals which are accordingly dismissed."

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7. We do not find any substance in the contention of learned counsel appearing for the respondent that the Tribunal has not committed any error of law for the High Court to interfere.

8. In the present case, the appellant was a service recipient. He was required to file returns for the period between 16-11-1997 to 2-6-1998, and thus, the provisions of Section 71A will be attracted, and not provisions of Section 71 . The Central Excise Appeal is allowed and the judgment of Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi dated 30-5-2007 is set aside.

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