(2016) 06 MAD CK 0081

In the Madras High Court

Case No : Writ Petition Nos. 30169-30170 of 2015 and M.P. Nos. 1 and 1 of 2015

MIL Industries Ltd. APPELLANT

Vs

Addl. Commr. of C. Ex., Chennai-II RESPONDENT

Date of Decision : 23-06-2016

Acts Referred:

Citation : (2016) 338 ELT 358

Hon'ble Judges : T.S. Sivagnanam, J.

Bench : Single Bench

Advocate : Shri K. Magesh, Advocate, for the Petitioner; Shri A.P. Srinivas, Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.S. Sivagnanam, J.—In both the writ petitions, the petitioner is M/s. MIL Industries Limited. In W.P. No. 30169 of 2015, the challenge is to an Order-in-Original No. 15/2015, dated 17-8-2015 and in W.P. No. 30170 of 2015, the challenge is to a demand issued by the respondent. Since the legal issue in both the cases are one and the same, they are heard together and are disposed of by this common order.

2. The petitioner is engaged in the manufacture of Rubber adhesives, Un-vulcanized Rubber sheets, vulcanized sheets, Rubber Hoses, Rubber Gaskets falling under Chapter Sub-Heading Nos. 3506 91 10, 4005 91 90, 4008 21 90, 4009 32 00, 4016 93 40 respectively of the Central Excise Tariff Act, 1985. A show cause notice was issued to the petitioner dated 1-7-2014 calling upon them to show cause as to why the Rubber lined Steel Tanks/Pipes, should not be treated as "excisable goods" manufactured under Section 2(f) of the Central Excise Act, 1944 and duty and interest be demanded from him and as to why the penalty should not be imposed on the petitioner. The petitioner submitted their reply to the show cause notice by referring to the decision of the Hon''ble Supreme Court in the case of Tega India Ltd. v. Commissioner of Central Excise, Calcutta-II reported in 2004 (164) E.L.T. 390 (S.C.) and also relied on the

decision of the Customs, Excise & Gold (Control) Appellate Tribunal in the Assessees own case in Final Order No. 816/99-B, dated 3-8-1999 and contended that there is no manufacture involved. Though such a reply was given, the first respondent/Adjudicating Officer did not deal with those objections and proceeded to discuss about the activity done by the petitioner and concluded that a new product emerges, which is not in the market as ''Rubber Lined Tanks'' and ''Rubber Lined Tubes'' and confirmed the proposal of the show cause notice.

3. It is not in dispute that in the Assessees own case the Tribunal held that the very same process was not manufacturing. The said order passed by the Tribunal has become final. Subsequently, in another appeal came up for consideration before the CESTAT in Final Order No. 692 of 2005, dated 28-4-2005, in which the Tribunal after taking into consideration the decision of the Hon''ble Supreme Court in Tega India Ltd., and the earlier order passed by the CESTAT, held that the issue is already covered the by the decision of the Tribunal and the Hon''ble Supreme Court and there is no manufacture involved in the present case and accordingly, the appeal filed by the revenue was rejected. It is not disputed by the respondent Department that more than 20 show cause notices, subsequently issued to the petitioner, were dropped by the authorities. In the light of the same, the impugned order calls for interference.

4. Accordingly, W.P. No. 30169 of 2015 is allowed and the impugned order dated 17-8-2015 is quashed and consequently, the demand which is impugned in W.P. No. 30170 of 2015, dated 24-6-2015 is also quashed.