(2019) 12 GAU CK 0019

In the Gauhati High Court

Case No : Central Excise Appeal No. 56, 61 Of 2018

Pan Parag India Ltd	APPELLANT
Vs	
Commissioner Of Central Excise And Anr	RESPONDENT

Date of Decision : 09-12-2019

Acts Referred:
Central Excise Act, 1944 — Section 35G
Finance Act, 2005 — Section 85(3)

Citation : (2019) 12 GAU CK 0019

Hon'ble Judges : Suman Shyam, J;Parthivjyoti Saikia, J

Bench : Division Bench

Advocate : S K Kejriwal, B Sarma

Final Decision : Disposed Off

Judgement

1. Heard Dr. Ashok Saraf, learned senior counsel assisted by Mr. S. K. Kejriwal, learned counsel appearing for the appellant. We have also heard Mr. Bipul Sharma, learned Standing Counsel, Excise Department, appearing for the respondent.

2. This appeal filed under Section 35 G of the Central Excise Act, 1944 is directed against the order dated 19.03.2018 passed by the Central Excise and Service Tax Appellate Tribunal (CESTAT), Eastern Regional Bench, Kolkata, in connection with MA(ROA)-75011/18 in Excise Appeal No.75634/14 rejecting the refund claim made by the appellant, in so far as the additional excise duty is concerned.

3. The following substantial questions of law have been framed by this Court at the time of admission of the appeal :-

"1) Whether the learned CESTAT was legally justified in rejecting the claim for refund of Additional Excise Duty without assigning any reason and ignoring the law laid down by the Hon'ble Apex Court in the case of M/s SRD Nutrients (P) Ltd. -Versus - Commissioner of Central Excise, Guwahati?

2) Whether the learned CESTAT was legally justified in disallowing the refund claim on account of Additional Excise Duty while simultaneously allowing the refund claim on account of Education Cess and Secondary and Higher Education Cess by following the Judgment rendered in M/s SRD Nutrients (P) Ltd. -Versus - Commissioner of Central Excise, Guwahati without appreciating the ratio decidendi of the said judgment?

3) Whether the learned CESTAT is legally justified in disallowing the refund claim on account of Additional Excise Duty while allowing the refund claim on account of Education Cess and Secondary and Higher Education Cess when admittedly Additional Excise Duty, Education Cess and Secondary and Higher Education Cess are treated at par as 'duties of excise'?

4) Whether the learned CESTAT is legally justified in disallowing the refund claims on account of Additional Excise Duty when admittedly Section 85(3) of the Finance Act, 2005 clearly laid down that the provisions of Central Excise Act relating to refunds and exemptions from duties shall also apply to the Additional Excise Duty?"

4. By referring to the refund order of the Commissioner (Appeals) dated 04.02.2014, Dr. Saraf submits that while allowing the claim of interest on delayed payment of refund made by the appellant the learned Commissioner had rejected the prayer for (i) refund of additional excise duty paid in cash, and (ii) refund of duty paid in cash equivalent to unutilised CENVAT Credit available. Aggrieved by the order dated 04.02.2014 the appellant had preferred an appeal before the CESTAT which was disposed of by the learned Tribunal by allowing the claim of refund of education cess and higher education cess but, submits Dr. Saraf, the learned Tribunal did not consider the prayer made by the appellant seeking refund of additional excise duty.

5. By producing a copy of the order passed by the learned CESTAT in Ex. Appeal No.75338/15 dated 27.09.2018 Dr. Saraf submits that the learned Tribunal has allowed the claim for refund of additional excise duty in another similar proceedings initiated before it but in the present case, the prayer of the petitioner has neither been considered nor allowed in so far as the claim for refund of additional excise duty is concerned.

6. Mr. B. Sarmah, learned Standing Counsel, Excise Department, has not disputed the submission made by Dr. Saraf but has argued that the appeal preferred against the judgment and order dated 27.09.2018 passed by the learned CESTAT is pending before this Court and the operation of the order has been stayed.

7. From a perusal of the order dated 19.03.2018 we find that the learned CESTAT has not considered the prayer of the appellant for refund of additional excise duty. Since that was one of the grounds taken in the appeal, it was incumbent upon the learned Tribunal to deal with the matter in accordance with law and pass a reasoned order. But as noted above, the said plea has not been

considered by the learned Tribunal. As such, we find force in the submission of Dr. Saraf that the impugned order dated 19.03.2018 is vitiated by non-application of mind and therefore, is liable to be set aside by this Court.

8. Our attention has also been drawn to the order dated 27.09.2018 passed by the learned Tribunal wherein similar claim for refund of additional excise duty has been allowed by relying on the law laid down by the Supreme Court in the case of Spentex Industries Ltd. Vs. CCE [2015 (324) ELT 684 S.C.]. If that be so, the plea raised by the petitioner, in our opinion, was also entailed to a proper consideration in the light of the decision of the Supreme Court rendered in the case of Spentex Industries Ltd. (supra).

9. For the reasons stated herein above, we set aside the order dated 19.03.2018 and remand the matter to the learned CESTAT for deciding the appeal afresh in the light of the observations made herein above. However, we make it clear that if the department has already taken any action by granting refund to the appellant under the order dated 19.03.2018 passed by the learned Tribunal, the said aspect of the matter shall not be reopened before the Tribunal while deciding the appeal afresh.

The appeal stands disposed of.