(2011) 04 KAR CK 0044

In the Karnataka High Court

Case No : T.R.C. No''s. 2 of 2004 and 5 of 2005

Pashupati Steels APPELLANT

Vs

Commissioner Of Central Excise
 Commissioner of Central Excise Vs Mangalore Steels RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Citation : (2013) 21 GSTR 460

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : S. Raghu, for the Appellant; V.K. Narayana Swamy, for the Respondent

Judgement

N. Kumar, J.—Sri V.K. Narayana Swamy is directed to take notice for the respondent in T.R.C. No. 5 of 2004. T.R.C. Nos. 2 of 2004 and 5 of 2004 are the references at the instance of the assessee, whereas T.R.C. No. 5 of 2005 is a reference at the instance of the Revenue.

2. The question of law which is referred is as under:

''Whether the facility of deemed Modvat credit under Ministry of Finance Order No. MP (DP)/Order/TS/36/94-TRU, dated March 1, 1994 would be available to the re-rollers even after crossing the monetary limit of Rs. 75 lakhs in respect of value of clearances, in terms of Notification No. 1/1993-CE, dated February 28, 1993?

3. The answer to this question revolves round the interpretation to be placed on Notification No. 1/1993-Central Excise, dated February 28, 1993. By virtue of the power under sub-section (1) of section 5A of the Central Excises and Salt Act, 1944 in public interest, the Central Government exempted from the payment of excise duty the excisable goods specified in the annexure to the said notification which falls under the Schedule to the Central Excise Tariff Act, 1985. The goods in question are MS rounds falling under SH 7214.90. The assessee was availing

of deemed credit in respect of their inputs, viz., re-rollable materials of iron and steel. They used to manufacture and clear their finished products at concessional rate of duty and availed of deemed credit of their re-rollable materials. The authorities issued a show-cause notice calling upon them to show cause why the duty should not be levied on them as their total turnover exceeds Rs. 75 lakhs and therefore, why the deemed credit should not be denied to them. The assessee pointed out that they are a SSI unit and their total turnover is less than Rs. 2 crores and therefore, they are entitled to concessional rate of duty as mentioned in the notification to the extent of Rs. 75 lakhs and thereafter for the remaining extent they have to pay duty at normal rate and merely because their total turnover exceeds Rs. 75 lakhs, they cannot be denied the benefit extended to them under the said notification. However, the assessing authority overruled the said objections and directed them to pay duty denying the concessional rate which they had availed of.

4. Aggrieved by the said order they preferred an appeal before the Commissioner of Customs and Excise who set aside the order of the assessing officer and granted the benefit. Aggrieved by the same, the Revenue preferred an appeal to the Tribunal. One of the appeals came to be disposed off in the light of the judgment of the Tribunal dismissing the appeal and upholding the order of the Commissioner. In respect of the other two appeals the order of the Commissioner was set aside in view of a judgment of the larger Bench which held that the assessee is not entitled to the benefit of exemption as the assessee had crossed the mark of Rs. 75 lakhs. That is how at the instance of the Revenue as well as the assessee these references are made.

5. The question involved in these proceedings was agitated before the High Court of Himachal Pradesh, in the case of Sood Steel Industrial (P) Ltd. Vs. Commissioners of Central Excise and Another, The Himachal Pradesh High Court held that the order of the larger Bench on which reliance is placed is not correct. The benefit of Notification No. 1/93-CE is available to any manufacturer whose total clearances in the preceding financial year did not exceed Rs. 2 crores. However, the benefit under the notification was limited to clearances up to Rs. 75 lakhs. But, this does not mean that manufacturers whose clearances exceed Rs. 75 lakhs but whose clearances is less than Rs. 2 crores are not entitled to the exemption. The notification identifies the category of manufacturers who are satisfying the criteria as set out in the notification and are entitled to avail of the benefit of the said notification. Therefore, it extended the benefit to the assessee whose total clearances was less than Rs. 2 crores.

6. The Punjab and Haryana High Court in the case of CCE v. Doaba Steel Rolling Mills [2010] 257 ELT A53 (P&H) following the judgment of the Himachal Pradesh High Court held that the assessee is entitled to the benefit under the said notification if its clearances are less than Rs. 2 crores.

7. We have gone through the notification. Before an assessee avails of the benefit under the said notification, he has to satisfy various requirements

stipulated therein. Once such requirements are met then the assessee would be entitled to the concessional payment of rate of duty to the extent of Rs. 75 lakhs. Even in respect of Rs. 75 lakhs there are three slabs and three rates of duty are prescribed. But, this benefit is extended to an assessee whose total clearances is less than Rs. 2 crores. In other words this is a benefit extended to a small-scale unit whose total clearances do not extend Rs. 2 crores. In other words before an assessee can claim benefit under this ratification, the first condition to be fulfilled is that his clearances should be less than Rs. 2 crores. Once that condition is fulfilled, on the first Rs. 75 lakhs clearances he can avail of the benefit of concessional payment of rate of duty as prescribed under the notification, i.e., first Rs. 30 lakhs, then Rs. 20 lakhs and then Rs. 25 lakhs. Therefore, the view of the larger Bench See 2000 (118) ELT 85 that once the clearances exceed Rs. 75 lakhs, the assessee is not entitled to concessional rate of duty is ex facie illegal and contrary to the notification. In that view of the matter, the question of law has to be answered in favour of the assessee and against the Revenue. All the references are answered accordingly. Sri V.K. Narayana Swamy is permitted to file the memo of appearance for the respondent in T.R.C. No. 5 of 2004, within four weeks.

