(2015) 04 MAD CK 0423

In the Madras High Court

Case No : Review Application No. 270 of 2014 in W.P. No. 11266 of 2014 and M.P. No. 1 of 2014

Saehan Stamping Pvt. Ltd. — APPELLANT

Vs

Commissioner of Central Excise, Chennai-IV — RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11

Citation : (2015) 323 ELT 543

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

Bench : Single Bench

Advocate : M. Venkatachalapathy, Senior Counsel for S. Gurumoorthy, for the Appellant; P. Mahadevan, CGSC, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J—Heard Mr. M. Venkatachalapathy, learned Senior Counsel for the applicant and Mr. P. Mahadevan, learned Standing Counsel for the respondents. This Review Application has been filed to review the direction issued by this Court in W.P. No. 11266 of 2014, dated 15-10-2014 [Saehan Stamping Pvt. Ltd. Vs. The Commissioner of Central Excise].

2. In the said writ petition, the applicant/petitioner sought for a writ of certiorari to quash the order passed by the Deputy Commissioner of Central Excise dated 21-3-2014. By the impugned communication, the department stated that the applicant/petitioner has not paid duty and the application Education Cess and Secondary Higher Education Cess within the due date as stipulated under Rule 8(1) of Central Excise Rules, 2002 (hereinafter referred to as "the Rules") for the goods manufactured and cleared from the factory during the period from 1-4-2013 to 28-2-2014. By referring to Rule 8(3A) of the Rules, it was stated that the applicant/petitioner is not eligible to utilize the Cenvat credit for payment of excise duty, however, the applicant/petitioner has utilized the Cenvet credit for payment of excise duty for the said period, which is in contravention of the said rule and hence they were directed to pay a sum of Rs. 2,17,25,877/-

and also the balance duty and Cess in cash along with appropriate interest, failing which it was indicated that action for recovery will be initiated under Section 11 of the Central Excise Act, 1944.

3. This Court, after hearing the learned Senior Counsel for the petitioner as well as the learned Standing Counsel for the respondents took note of the decision of this Court in the case of Unirols Airtex Vs. Assistant Commr. of C. Ex., Coimbatore, (2013) 296 ELT 449 and dismissed the writ petition and granted liberty to the applicant/petitioner to submit a representation to the 2nd respondent for extension of time for remitting the amount.

4. At the time when the writ petition was disposed of, the applicant/petitioner did not bring to the notice of this Court about the order passed by the Hon''ble Division Bench in the case of Unirols Airtex Vs. The Assistant Commissioner of Central Excise Coimbatore Division IV, The Superintendent of Central Excise and The Inspector of Central Excise Coimbatore Division IV, (2013) 200 ECR 456 , by which, the Hon''ble Division Bench reversed the decision and in fact, I was also a party to the Division Bench Judgment.

5. According to the applicant/petitioner, the Division Bench Judgment referred to above could not be placed for consideration of this Court on account of the fact that the same was not reported immediately and only due to inadvertence, the said judgment could not be placed for consideration.

6. The said decision having been rendered by the Division Bench much prior to the decision in the present writ petition, the applicant/petitioner has made out a case for reviewing the order.

7. Accordingly, Review Application No. 270 of 2014 is allowed and the order passed in W.P. No. 11266 of 2014, dated 15-10-2014 [Saehan Stamping Pvt. Ltd. Vs. The Commissioner of Central Excise] is set aside. The writ petition is restored to the file of this Court and the Registry is directed to post the matter before the appropriate Bench during the third week of June 2015. By then, the respondents shall file counter.

8. At the time when the review application was entertained, an interim order was granted by observing that the respondent/department shall not initiate any coercive action against the applicant/petitioner. In the light of the above order passed in the review application, the respondent/department shall not take any coercive action against the applicant/petitioner until further orders. No costs. Connected miscellaneous petition is closed.