
(2014) 07 MAD CK 0176

In the Madras High Court

Case No : Civil Misc. Appeal Nos. 2681 and 2682 of 2006 and M.P. No. 1 of 2006

Salem Steel Industries

APPELLANT

Vs

Customs, Excise and Service Tax Appellate Tribunal

RESPONDENT

Date of Decision : 25-07-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11C, 3, 35G, 3A

Citation : (2014) 309 ELT 211 : (2014) 47 GST 402 : (2015) 33 GSTR 501

Hon'ble Judges : R. Sudhakar, J;G.M. Akbar Ali, J

Bench : Division Bench

Judgement

R. Sudhakar, J.—The above Civil Miscellaneous Appeals are filed by the assessee under Section 35G of the Central Excise Act against the order dated 09.03.2006 made in Appeal Nos. E/517/2003 & E/433/2003 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai. At the time of admission of the above appeals, the following substantial questions of law have been framed:

"1. Whether by way of a subsequent notification No. 4/2000-CE-NT, dated 31.1.2000, can the duty liability be fixed for the month of August, 1997?

2. Whether because of notification No. 4/2000-CE-NT, dated 31.1.2000 a fresh show cause notice is required or not? and

3. Whether the first respondent/Tribunal can ignore the legal issue that the order of adjudicating authority is beyond the scope of the proposal made in the show cause notice?"

2. The brief facts of the case are as follows:

M/s. Salem Steel Industries, the appellants herein, have two units, one at Gummidipundi and the other at Salem. They are engaged in the manufacture of hot re-rolled products of non-alloy steel falling under various Headings in Chapter 72 of the CETA Schedule. Pursuant to the notification No. 33/97-CE(NT), dated 01.08.1997, the assessee was brought under the compounded levy scheme in

terms of sub-section (3) of Section 3A of the Central Excise Act, whereby, the duty liability was determined on the basis of Annual Capacity of Production.

3. The issue in the present case relates to rate of duty applicable for clearance made during the period 1st August, 1997 to 31st August, 1997. By notification No. 50/97-CE, dated 01.08.1997, in respect of goods manufactured or produced prior to 1st August, 1997, cleared on or after that date, the rate of duty was determined at Rs. 300/- per M.T. The assessee discharged the liability for the goods cleared as per the said notification. However, by notification No. 57 of 1997-CE, dated 30th August, 1997, the relevant date, viz., 1st August, 1997, was changed to 1st September, 1997, thereby, the assessee became ineligible for concessional rate of duty between 01.08.1997 and 31.8.1997, which forced the Department to issue show cause notices.

4. In the case of Salem Unit, the Original Authority, taking note of Notification No. 4/2000-CE(NT), dated 31.1.2000, whereby the concessional duty, as applicable under Notification No. 50/1997, dated 01.8.1997, was made applicable for the period 01.08.1997 ending with 31.8.1997, however, found that the total quantity, the assessee had manufactured during August 1997, was 1350.925 MT, for which the assessee had paid duty for 180.375 MT and hence there was a balance of quantity at 1170.550 MT, for which the duty has to be paid. Hence, the Original Authority ordered recovery of duty alone without imposing penalty.

5. In respect of the Gummidipundi unit, the Commissioner of Central Excise (Appeals) passed an order holding that the assessee was liable to pay the duty amount at Rs. 300/- per MT in view of the Notification No. 4/2000-Central Excise (NT) dated 31.1.2000. Accordingly, the Commissioner confirmed the demand made by the Adjudicating Authority. Since the assessee did not pay the duty, the Commissioner imposed penalty of Rs. 15,000/-.

6. As against the order passed by the Original Authority in respect of Salem Unit, an appeal was preferred before the Commissioner of Central Excise (Appeals), who, by order dated 12.1.2004, recorded the submission of the assessee and held as follows:

"5.5 As accepted by the appellant in para 5 of the written submission dated 20.11.2003 that the rate of duty of Rs. 300/- per MT is in consonance with the Notification No. 4/2000 CE (NT) dt. 31.01.2000, for the goods manufactured and cleared during August 1997 and the duty demanded by the Lower Authority for the quantity of 1170.550MT as proposed in the SCN dt. 27.11.97 is correct and the amount of duty of Rs. 3,51,165/- demanded by the Lower Authority is sustainable in Law."

7. As against the order passed by the Commissioner of Central Excise (Appeals) in respect of the Salem Unit as well as the Chennai Unit, the appellant has preferred appeals in respect of both units before the Customs, Excise and Service Tax Appellate Tribunal.

8. The Tribunal, by a common order dated 09.03.2006, held that in August, 1997, the compounded levy scheme was not in force and therefore the assessee was liable to pay duty at tariff rate in terms of Section 3 of the Central Excise Act. However, the Government by Notification No. 4/2000-CE(NT), dated 31.1.2000 issued under Section 11C of the Central Excise Act directed that any duty of excise in excess of the duty leviable at the rate of Rs. 300/- per MT should not be required to be paid in respect of hot re-rolled products of non-alloy steel manufactured in the month of August, 1997 on which duty had been paid under Section 3A. Hence the Tribunal held that the Adjudicating Authority restricted the demand of duty to Rs. 300/- per MT. Accordingly, the order of the Adjudicating Authority in so far as the recovery of the duty was upheld by the Tribunal. In so far as levy of penalty is concerned, the Tribunal taking note of the various notifications held that the assessee had no intention of evading payment of duty, since they were under the impression that they were covered under the compounded levy scheme, deleted the penalty. Aggrieved by the order of the Tribunal, the assessee has filed the present Civil Miscellaneous Appeals.

9. Heard learned counsel appearing for the appellant and the learned standing counsel appearing for the second respondent and perused the materials placed on record.

10. It is seen that the compounded levy scheme was introduced from 01.08.1997 vide notification No. 33/97-CE(NT), wherein it was stated that in terms of sub-section (3) of Section 3A of the Central Excise Act, the duty liability was determined on the basis of Annual Capacity of Production. The assessee cleared the goods under this compounded levy scheme. Subsequently, by Notification No. 57 of 1997-CE, dated 30th August, 1997, the relevant date, viz., 1st August, 1997, was changed to 1st September, 1997. Hence, the assessee became ineligible to claim concessional rate of duty as per the compounded levy scheme. However, by a Notification No. 4/2000-CE(NT), dated 31.1.2000, where the concessional duty, as applicable under Notification No. 50/1997, dated 01.8.1997, was made applicable for the period 01.08.1997 ending with 31.8.1997.

11. The Adjudicating Authority, taking note of Notification No. 4/2000-CE(NT), dated 31.1.2000, wherein duty was fixed at Rs. 300/- per Metric Tonne, found that there was a difference between closing stock and opening stock from 1.8.97 to 31.8.1997. Since the compounded levy scheme was introduced vide notification No. 33/97-CE(NT), dated 01.08.1997, the assessee was under the impression that they were covered under the Compounded levy scheme. Subsequently, as the date of the compounded levy scheme was changed to 01.09.1997, the assessee was ineligible to seek concessional rate of duty under the said scheme. It is seen from the order of the Commissioner of Central Excise (Appeals) that the assessee in his written submission dated 20.11.2003 had admitted that the rate of duty of Rs. 300/- per MT was in consonance with Notification No. 4/2000-CE(NT), dated 31.1.2000.

12. In such view of the matter, that the assessee itself had admitted that Notification No. 4/2000-CE(NT), dated 31.1.2000 is applicable for the goods cleared during August 1997, we find no reason to interfere with the order of the Tribunal. The Tribunal, after taking note of various notifications, viz., Notification No. 48/97-CE, dated 01.08.1997, 50/97-CE, dated 01.08.1997, 57/97-CE, dated 30.08.1997, deleted the penalty also. Hence, the questions of law raised do not merit consideration, as the assessee had already accepted the benefit of Notification No. 4/2000-CE(NT), dated 31.1.2000. For the foregoing reasons, we pass the following order:

(i) On the questions of law raised, we are of the view that the Tribunal was justified in upholding the order of the Adjudicating Authority.

(ii) Consequently, the order of the Tribunal dated 09.03.2006 stands confirmed.

In the result, both the Civil Miscellaneous Appeals are dismissed. No costs. Consequently, M.P. Nos. 1 and 1 of 2006 are also dismissed.