(2014) 12 MAD CK 0142

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 2230 of 2008

Southern Press Tools Ltd. APPELLANT

Vs

CESTAT, Chennai RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A(1), 11AC

Citation : (2015) 320 ELT 90

Hon'ble Judges : R. Sudhakar, J;R. Karuppiah, J.

Bench : Division Bench

Advocate : K. Jayachandran, for the Appellant; Ravindran, Standing Counsel, for the Respondent

Judgement

R. Sudhakar, J.?This Civil Miscellaneous Appeal, filed by the assessee challenging the Final Order No. 1068/2007, dated 29-8-2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, at Chennai [2008 (223) E.L.T. 630 (Tri.-Chen.)] was admitted by this Court on the following substantial questions of law:

"1. Whether in the facts and circumstances of the case, the Tribunal is right in holding that the appellant is the manufacturer in the absence of any machineries in the premises?

2. Whether the Tribunal is right in rejecting the applications to raise additional evidence which goes to the root of the matter that there were no machineries available and the fact of manufacture is totally wrong?"

The appellant/assessee is engaged in the manufacturing of tools, dies, jigs and fixtures and sheet metal components in the premises at No. 367 Chettipalayam Road, Malumichampatti, Coimbatore 21. They have second premises at No. 368, Chettipalayam Road, Malumichampatti, Coimbatore 21, wherein they have been manufacturing radiators components/sub-assemblies/assemblies for T72 cooling system since 1992. The Department Officials visited the second premises of the appellant factory and found that the existence of the second premises of the appellant and its manufacturing activity had not been intimated to the Department. They also found that the branded radiators of M/s. Universal Radiators Limited were found in packed condition. On enquiry, the representatives of the assessee informed that in respect of the branded radiators of M/s. Universal Radiators Ltd., no accounts have been maintained in the company. A show cause notice dated 20-2-1997 was issued to the assessee as well as to M/s. Universal Radiators Ltd. demanding duty, interest and penalty invoking proviso to Section 11A(1) of the Central Excise Act, 1944 on the ground that the assessee contravened the provisions of Rules 9(1), 51, 52A, 53, 54, 173F, 173G, 174 and 226 of the Central Excise Rules, 1944.

2. In response to the show cause notice, the assessee, filed reply stating that show cause notice was issued based on erroneous assumptions that the premises at Part No. 368 Chettipalayam Road is their second premises and they manufactured T 72 Cooling system components there and clear them to M/s. Universal Radiators Ltd. The assessee further stated that they did not have machinery or infrastructure for the manufacture of T 72 cooling systems parts in their alleged second premises. Hence, the assessee stated that in the absence of suppression with intention to evade payment of duty, Section 11AC of the Central Excise Act cannot be made applicable.

3. Not satisfied with the reply filed by the assessee, the Adjudicating Authority passed an order confirming the confiscation, duty and penalty in respect of the assessee as well as of the co-noticee.

4. Aggrieved by the order of the Adjudicating Authority, the assessee preferred an appeal before the Customs, Excise and Service Tax Appellate Tribunal.

5. The Tribunal, by following the decision in the case of Srichakra Tyres v. CCE reported in 1999 (108) ELT 361, Commissioner of Central Excise, Delhi Vs. Maruti Udyog Ltd., and CCE v. Elgi Equipment reported in 2001 (128) E.L.T. 52, remanded the matter to the Commissioner for de novo consideration in respect of the assessee as well as the co-noticee.

6. On remand, the Commissioner, passed an order, again confirming the duty, confiscation and penalty.

7. Aggrieved by this order, the assessee pursued the matter again before the Tribunal.

8. The Tribunal, by order dated 29-8-2007, following the decision of the Apex Court reported in Thermax Private Limited Vs. The Collector of Customs (Bombay), New Customs House, allowed the appeal holding that denial of exemption on the ground of non-compliance of procedural condition is not sustained. Hence, the Tribunal granted the benefit of Notification dated 10-6-1987. However, the Tribunal sustained the order of the Adjudicating Authority in respect of imposition of redemption fine in lieu of confiscation. The Tribunal also deleted the penalty imposed.

9. Aggrieved by this Order, the present Civil Miscellaneous Appeal has been filed raising the above-mentioned substantial questions of law.

10. It is submitted by the learned standing counsel appearing for the Revenue that as against the order of the Tribunal dated 29-8-2007, the Department filed an appeal as against the co-noticee, namely, M/s. Universal Radiators Limited, before the Supreme Court. The Supreme Court, by order dated 10-8-2011 in Civil Appeal No(s). 2878-2379 of 2008 [2011 (213) E.L.T. 20 (S.C.)] allowed the appeal filed by the Department by way of remand holding as follows:

"Notice was issued and during the pendency of the aforesaid appeals in this Court, a similar issue came to be decided by the Constitution Bench of this Court in Commissioner of Central Excise, New Delhi Vs. Hari Chand Shri Gopal and Others, etc. etc., . In the said case, the Constitution Bench of this Court considered the matter of exemption and also the pre-conditions for entitlement to avail such exemption. While deciding the said matter, this Court held that the Tribunal has committed an error in overlooking the object and purpose of the procedure laid down in Chapter X. It was also held that detailed procedures have been laid down in Chapter X so as to curb the diversion and mis-utilisation of goods which are excisable. This Court while dealing with the scope and ambit of Chapter X and while laying down the aforesaid conclusions have also laid down certain guidelines. In the said case, this Court has clearly held that the aforesaid approach of the Tribunal was wrong and illegal.

On going through the records of the present case, we find that a similar approach has been taken by the Tribunal in the present case also and, therefore, the decision rendered by the Tribunal is required to be set aside which we hereby do. We, therefore, while setting aside the judgment and order passed by the Tribunal, remit back the matter to the Tribunal for fresh consideration de novo of the dispute in accordance with law as expeditiously as possible preferably within a period of six months from the date of the receipt of the records of this case. Needless to state that Tribunal shall consider the appeals pending before it in accordance with law laid down by the Constitution Bench of this Court in Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others (supra).

11. From the above decision of the Supreme Court, it is evident that the order of the Tribunal has been set aside in its entirety and the Tribunal was directed to re-consider the issue as to whether M/s. Southern Press Tools is entitled for exemption under Notification No. 164/87, dated 10-6-1987 for the goods cleared to M/s. Universal Radiators Ltd. without observance of the procedures prescribed under Chapter X of the Central Excise Rules, 1944 and also whether penalty can be imposable under Rule 209(A) of the erstwhile Central Excise Rules, 1944.

12. Since the entire order of the Tribunal has been set aside with a direction to the Tribunal to consider the issue de novo, the present appeal by the assessee on a limited issue does not survive. Therefore, the plea now made by the appellant

can be agitated by the appellant before the Tribunal and the Tribunal inter alia is directed to go into the issue raised by the present appellant on the plea of confiscation of goods as well. In the result, this Civil Miscellaneous Appeal is allowed by way of remand. No costs.

