(2014) 10 MAD CK 0059

In the Madras High Court

Case No : W.P. No. 24794 of 2014 and M.P. No. 1 of 2014

Sujhan Instruments APPELLANT

Vs

Joint Commr. of C. Ex., Chennai-II RESPONDENT

Date of Decision : 17-10-2014

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11 A, 11AA

Citation : (2015) 317 ELT 446 : (2015) 50 GST 62

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

Bench : Single Bench

Advocate : Joseph Prabakar, Advocates for the Appellant; A.P. Srinivas, Sr. Standing Counsel, Advocates for the Respondent

Judgement

T.S. Sivagnanam, J.—With the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal. The petitioner has come forward with this Writ Petition for quashing the Order-in-Original No. 20/2014, dated 10-3-2014 in file C No. V/15/13/2103-CX. Adj. passed by first respondent.

2. The learned Senior Standing Counsel appearing for the respondents raised a preliminary objection as to the maintainability of the Writ Petition by stating that as against the impugned order, the petitioner has to prefer an appeal before the Commissioner (Appeals) within a period of sixty days from the date of the order-in-original.

3. It is true that the petitioner has to exhaust the appeal remedy. But, this Court is convinced that the petitioner need not have approached the appellate authority, since the impugned order is vitiated with an error apparent on the face of the record and impugned order was the outcome of total non-application of mind and utter disregard to the order passed by the Commissioner (Appeals) and stay was granted by the CESTAT.

4. The following facts and reasoning support the above conclusion.

(a) The petitioner Firm are the manufacturers of Step Fan Regulator and T.V. Coaxial Socket Outlet under the brand name of ''MK'' owned by M/s. Honey Well Electrical Devises and Systems (I) Ltd., falling under Chapter Heading 8529 9090. A show cause notice was issued to the petitioner on 4-3-2013, alleging that the petitioner has not adopted the assessable value in accordance with clause (ii) of Rule 10A of the Central Excise Valuation (Determination of Price of Excisable goods) Rules, 2000, thereby short payment of Excise Duty. Accordingly, the petitioner was directed to show cause as to why-

"(a) the differential duty of Rs. 11,75,846/- (Rupees Eleven Lakhs Seventy Five Thousand Eight Hundred and Forty Six only) (Cenvat Rs. 11,41,609/- + Education Cess Rs. 22,825/- + Secondary Higher Education Cess Rs. 11,412/- should not be demanded from them under Section 11 A of the Central Excise Act, 1944.

(b) Interest under Section 11AA of the Central Excise Act, 1944 should not be demanded from them, on the differential duty amount; and

(c) Penalty should not be imposed on them under Rule 25 of the Central Excise Rules, 2002."

(b) The petitioner submitted his reply dated 3-4-2013. The petitioner did not extensively deal with the merits of the matter since very same issue in respect of the earlier clearance were the subject matter of appeals before the Commissioner (Appeals) and final orders were passed by the Commissioner (Appeals) in Appeal Nos. 12 & 13/2013 (M-II) dated 30-1-2013. Therefore, the petitioner stated that the order in appeal dated 30-1-2013, is already in their favour and enclosed the copy of the order. Thereafter, the first respondent has taken up the matter and has passed the impugned order.

5. It is to be noted that in paragraph 9 of the impugned order, it has been mentioned that the copy of the Order in Appeal Nos. 12 & 13 (M-II), dated 30-1-2013 passed by the Commissioner (Appeals), Chennai, has been allowed in favour of the petitioner and a similar case relating to the earlier period was also referred to.

6. Nevertheless, the first respondent in paragraph No. 15.0 of the impugned order proceeded to refer to the order in original dated 3-9-2010 and the order in original dated 29-2-2012. The order in original dated 3-9-2013 is now the subject matter of appeal before the CESTAT and the CESTAT by order dated 31-7-2012, has granted waiver of the requirement of pre-deposit and stayed the collection of duty during the pendency of the appeal. In so far as the order in original dated 29-12-2012 is concerned, that order has been reversed by an order in appeal dated 30-1-2013 and that was pointed out by the petitioner in his reply dated 3-4-2013 furnishing a copy. The first respondent after referring to the two orders, passed the impugned order, when the first respondent ought not have placed reliance, since on such order has been stayed by the CESTAT and the other order has been reversed by the Commissioner (Appeals) and proceeded to confirm the demand.

7. The manner in which the impugned order has been passed by the first respondent, cannot be appreciated. It is admitted by the respondents that as against the order in appeal dated 30-1-2013, the Department has preferred an appeal to the CESTAT and the same is now pending before the Tribunal. In such circumstances, this Court is of the view that the impugned order has been passed on account of sheer non-application of mind and based on irrelevant consideration, without reference to the orders passed by the superior authorities viz. the order passed by the Commissioner (Appeals) as well as the CESTAT. Hence, for all the above reasons, the Writ Petition is allowed and the impugned order is quashed. The matter is remanded to the respondents for fresh hearing. The respondents shall fix a date for hearing of the matter, on which date the petitioner shall be heard in person and after taking note of all the above observations, the first respondent shall pass a reasoned orders on merits and in accordance with law and in the light of the above, this Court is the firm view that the petitioner need not be compelled to file an appeal as against the impugned proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.