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(2015) 06 MAD CK 0187

In the Madras High Court

Case No : C.M.A. No. 349 of 2011

The Commissioner of Central Excise and Service Tax Large Taxpayer Unit 1775	APPELLANT
Vs	
International Flavours and Fragrance Ltd.	RESPONDENT

Date of Decision : 11-06-2015

Acts Referred:

Citation : (2015) 06 MAD CK 0187

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : A.P. Srinivas, for the Appellant; S. Jayakumar, Advocates for the Respondent

Judgement

R. Sudhakar, J.

1. Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This Court, vide order dated 2.3.2012, while admitting the appeal, framed the following substantial questions of law for consideration :-

"Whether the Tribunal was right in holding that the interest is not liable to be paid in cases where CENVAT Credit is wrongly taken but had not been utilised whereas Rule 14 of CENVAT Credit Rules, 2004 is clear and unambiguous in the position that interest would be recoverable when CENVAT Credit is taken or utilised wrongly?"

2. The respondent is engaged in the manufacture of flavours and fragrances falling under Chapter 29, 32 and 33 of the 1 st Schedule to the Central Excise Tariff Act, 1985. The respondent availed credit of duty paid on inputs utilised in the manufacturing unit. As the inputs have limited shelf life, they were periodically reviewed and the expired inputs are destroyed. For the destroyed inputs, which were not used, the respondent is liable for reversal of credit availed. Accordingly, the respondent reversed the credit of Rs. 2,29,160/- in

respect of inputs destroyed during the years 2006 and 2007. In view of the delay in reversal of the credit, the respondents were liable to pay interest in terms of Rule 14 of the CENVAT Credit Rules, 2004. Accordingly, a show cause notice was issued asking why interest to the tune of Rs. 36,795/- should not be levied in terms of Rule 14 of the CENVAT Credit Rules. After adjudication, the adjudicating authority passed the order dated 22.12.2008 confirming the demand of interest and imposing penalty equivalent to the credit reversed under Rule 15 of the CENVAT Credit Rules, 2004.

3. Aggrieved against the said adjudication order, the respondent filed appeal before the Commissioner of Central Excise (Appeals). The Commissioner (Appeals), vide order dated 16.9.09, confirmed the order of the adjudicating authority relying on CBEC Circular No. 897/17/2009-CX dated 3.9.09. However, the penalty alone was reduced to Rs. 25,000/-.

4. Against the said order, the respondent/assessee preferred appeal to the Tribunal. The Tribunal, on considering the facts of the case, relying on the decision in the case of Maruti Udyog Ltd. (2007 (214) ELT 173 (P&H)) and Ind-Swift Laboratories Ltd. (2009 (240) ELT 328 (P&H)), allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

5. Learned counsel appearing for the respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have filed the appeal in view of the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide Instructions dated 20.10.2010 in F.No. 390/Misc./163/2010-JC, wherein the following instruction has been issued :-

"5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs. 1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs. 2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs. 1 Lakh with mandatory penalty of Rs. 1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs. 1 Lakh. Similarly, if the duty involved in a case is Rs. 2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

6. It is contended by the learned counsel for the respondent that in view of the above instruction, for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs. 2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Commissioner (Appeals) is well within the limit of Rs. 2 Lakhs, the present appeal, filed by the Department, is

not maintainable.

7. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondent/assessee and perused the materials available on record.

8. Even though this appeal was admitted on the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made by the learned counsel for the respondent that the monetary limit to prefer an appeal is pegged at Rs. 2,00,000/- by the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise and Customs vide Instructions dated 20.10.2010 in F.No. 390/ Misc./163/2010-JC.

9. It is seen from the records that the adjudicating authority initially imposed Rs. 36,795/- as interest and penalty equivalent to the credit reversed, which, on appeal, was confirmed, but the penalty was reduced to Rs. 25,000/- and on further appeal by the assessee, the Tribunal set aside the order of the Commissioner (Appeals). Therefore, it is very clear from the records that the monetary limit having been fixed at Rs. 2 Lakhs, even as per the order of the Commissioner (Appeals), the interest and penalty being less than Rs. 2 Lakhs, the appeal is not maintainable.

10. The abovesaid circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the questions of law formulated and in the light of the Board''s circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to costs.

