(2014) 12 MAD CK 0117

In the Madras High Court

Case No : Civil Misc Appeal No. 1190 of 2007

The Commissioner of Central Excise — APPELLANT

Vs

Raji Thangam Textiles Ltd. — RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Citation : (2015) 50 GST 57

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

Bench : Division Bench

Advocate : Vikram Ramakrishnan, Standing Counsel, Advocates for the Appellant

Judgement

R. Sudhakar, J.—This Civil Miscellaneous Appeal, filed by the Department challenging the Final Order No. 1395 of 2005 dated 29.9.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Chennai was admitted by this Court on the following substantial question of law:

"Whether the Appellate Tribunal is correct in allowing the appeal of the respondent on the ground that the ACP Rules were suffering from the vice of illegality and unconstitutionality right from the day on which they were made and the determination of ACP by the Commissioner and the procedure laid down for matters such as determination of duty liability, collection of duty, abatement, etc., were all futile exercises?"

2. The above substantial question of law does not survive at this point of time, as the Rules under which demand has been made, namely, Hot Air Stenter Independent Textile Processors ACP Determination Rules, 1998 issued under Notification 42 of 1998 dated 10.12.1998 has been struck down by this Court in the case of Beauty Dyers Vs. Union of India (UOI), wherein it is held as follows:

"12. On the basis of the above-mentioned decisions, if we considered the scope of arguments of learned Senior Counsel with reference to the impugned notifications, the case of the petitioners has to be accepted under the impugned notifications, the Government have not tried to fix the formula to determine the production capacity on the basis of the quantity of production, but on the basis of the value fixed by the Central Government by themselves irrespective of the capacity of the factories concerned. Such a flat rate fixed by the Central Government cannot be sustained in view of the above-mentioned decisions of the Apex Court. Further, from a reading of Notification Nos. 36/1998 and 42/1998. I am not able to see any link between such notification though one is for fixing determination of production capacity and another is giving the rate of duty of excise which has to be levied and collected on the basis of the said determination of the production capacity following the rules framed under Notification No. 42/1998. Any rules, should be only in accordance with the main provisions and to achieve the object of the said provisions. So, the capacity of production cannot be arrived at on the basis of deemed value as it has been given by the Central Government that too without any basis.

13. As rightly submitted by learned Counsel all chambers irrespective of the nature, age and their capacity cannot be treated equally for the purpose of fixing the annual capacity of production, as the same has been done under Notification No. 42/1998. The rules framed under Notification No. 42/1998 is not having acceptable method to arrive at the capacity of production, which is absolutely necessary to levy and collect duty of excise under Section 3A of the Act. So, the said rules cannot be adopted for determination of excise duty as they cannot level the correct capacity of production of the factory for the purpose of levying excise duty. So, the Rule 3 of the rules issued in the Notification No. 42/1998 cannot be sustained as they are ultra vires Section 3A of the Act.

14. The Order rules issued under other Notifications which are impugned in the other writ petitions are only based on the rules issued in Notification No. 42/1998 and so the reasoning given above will apply to these rules also. So they also cannot be sustained consequently, they are set aside. But the petitioners are liable to pay duty of excise under Section 3 of the Act or under any other provisions contemplated for the same."

3. As against the above-said decision of this Court, the Department has filed Writ Appeal Nos. 2366 to 2369 of 2002, which came to be dismissed by this Court vide order dated 18.7.2008. Against which, Special Leave Petition was filed before the Honourable Supreme Court, which was also dismissed vide order dated 06.02.2009. It appears that the Department has filed a review application against the said order before the Supreme Court, which is stated to be pending.

4. Since the issue has already been decided by this Court in the manner stated above, pending review is not a ground to keep this appeal pending on the file of this Court. Accordingly, the questions of law are academic, since the Rule under which demand has been made has been struck down.

5. In the result, this Civil Miscellaneous Appeal stands dismissed. No costs.

