(2015) 07 MAD CK 0393

In the Madras High Court

Case No : Civil Miscellaneous Appeal Nos. 3270 to 3272 of 2010

Thiru Arooran Sugars	APPELLANT
Vs	
The Custom, Excise and Service Tax Appellate Tribunal, Chennai and Others	RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 35-G

Citation : (2015) 52 GST 1065

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

Bench : Division Bench

Advocate : Muthuvenkataraman for Mohammed Shaffiq, for the Appellant

Judgement

R. Sudhakar, J—The above Civil Miscellaneous Appeals have been filed under Section 35-G of the Central Excise Act, 1944 challenging the order 23.07.2010, 07.05.2010 and 23.07.2010 made in Final Order Nos. 807, 522 and 808 of 2010 on the file of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai.

2. At the time of admission, this Court framed the following substantial question of law:

"Whether the order of the learned Tribunal inasmuch as it gives effect to the notification No. 16/09 prior to 7.7.2009 overlooking the fact that the same is made expressly effective only from the aforesaid date?"

3. The appellant/assessee is a manufacturer of sugar, molasses, rectified spirit etc. The assessee availed Cenvat Credit on capital goods used in the erection of various capital goods, viz., M.S. Plates, M.S. Angles, M.S. Channels and H.R. Plates, which were purchased and utilized in the construction/erection of plant.

4. Show cause notices were issued by the Department stating that these are not capital goods and a demand was made on these goods. Reply was sent by the assessee objecting to the demand. Rejecting the contention of the assessee, the

Adjudicating Authority confirmed the demand. Aggrieved by which, the assessee preferred an appeal before the Commissioner (Appeals), who allowed the appeal relying upon the decision of the Tribunal in the case of Sakthi Sugars Ltd. Vs. CCE reported in 2008 (227) ELT 107] . As against the same, the Department pursued the matter before the Appellate Tribunal.

5. The Tribunal following the decision in the case of Vandana Global Ltd. vs. Commissioner of Central Excise2010 (253) ELT 440 allowed the appeal filed by the Revenue.

6. Aggrieved by the order of the Tribunal, the assessee has preferred the present appeals.

7. Learned counsel appearing for the appellant/assessee submits that the issue involved in these appeals is covered by a decision of this Court dated 10.7.2014 in C.M.A. No. 1265 of 2014, wherein, this Court following the ratio laid down in the decision reported in Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 and the earlier decision of this Court in C.M.A. No. 3101 of 2005 dated 13.12.2012, dismissed the appeal filed by the Revenue.

8. Learned Standing Counsel appearing for the Revenue heavily relied upon the decision reported in Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III, AIR 2011 SC 3286 : (2011) 187 ECR 10 : (2011) 8 JT 547 : (2011) 8 SCALE 203 : (2011) 32 STT 469 in Civil Appeal No. 5295 of 2003 dated 02.08.2011. However, we find that this Court has earlier considered the issue in C.M.A. No. 1301 of 2005 dated 31.12.2012, wherein, while dismissing the appeal filed by the Revenue the Division Bench of this Court held as follows:

"8. Even though learned standing counsel appearing for the Revenue submitted that the judgment in the assessee''s own case reported in AIT-2011-358-HC (The Commissioner of Central Excise V. M/s. India Cements Limited) had been appealed against, as of today, there are no details; in any event, the fact herein is that the Revenue does not controvert the facts found by the Assistant Commissioner that the impugned goods were used for fabrication of structurals to support various machines like crusher, kiln, hoppers, pre-heaters conveyor system etc. and that without these structurals, the machinery could not be erected and would not function.

9. In the decision reported in AIT-2011-358-HC (The Commissioner of Central Excise V. M/s. India Cements Limited), pointing out to Rule 57Q and the interpretation placed by the Apex Court in the decision reported in Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 and in particular Paragraph Nos. 12 and 13, wherein the Apex Court had applied the user test by following the Jawahar Mills''s case, this Court held that steel plates and M.S. Channels used in the

fabrication of chimney would fall within the ambit of "capital goods". In the face of this decision in the assessee''s own case there being no new circumstance or decision in favour of the Revenue, we do not find any good ground to take a different view herein too.

10. As far as the reliance placed by the Revenue on the decision reported in Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III, AIR 2011 SC 3286 : (2011) 187 ECR 10 : (2011) 8 JT 547 : (2011) 8 SCALE 203 : (2011) 32 STT 469 is concerned, we do not think that the said decision would be of any assistance to the Revenue, considering the factual finding by the Tribunal therein in the decided case that the machineries purchased by the assessee were machineries themselves. Thus, after referring to the decision reported in Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 , the Apex Court held that in view of the findings rendered by the Tribunal that the machineries were complete and having regard to the meaning of the expression "components/parts", with reference to the particular industry in question, the Apex Court rejected the appeal filed by the assessee.

11. Thus going by the factual finding, which are distinguishable from the facts found by the Authorities below in the case on hand, we have no hesitation in rejecting the Revenue''s appeal, thereby confirming the order of the Tribunal.

12. Learned standing counsel appearing for the Revenue pointed out that the Tribunal had merely passed a cryptic order by referring to the earlier decisions. We do not think that this would in any manner prejudice the case of the Revenue, given the fact that on the identical set of facts, the assessee''s own case was considered by this Court and by following the decision reported in Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 , the Revenue''s appeal was also rejected. In the circumstances, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, C.M.P. No. 16107 of 2005 is also dismissed."

9. From a perusal of the above said judgment, it is seen that there is no change in the circumstance and this Court had already considered the issue and held that the decision reported in Saraswati Sugar Mills Vs. Commissioner of Central Excise, Delhi-III, AIR 2011 SC 3286 : (2011) 187 ECR 10 : (2011) 8 JT 547 : (2011) 8 SCALE 203 : (2011) 32 STT 469 in Civil Appeal No. 5295 of 2003 dated 02.08.2011 is distinguishable on facts. This Court applied the principles laid down in the decision reported in Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 and held in favour of the assessee.

10. Hence, following the principles laid down in the decision reported in

Commissioner of Central Excise, Jaipur Vs. Rajasthan Spinning and Weaving Mills Ltd., (2010) 178 ECR 1 : (2010) 255 ELT 481 : (2010) 7 JT 64 : (2010) 12 SCC 186 : (2010) 103 SCL 451 : (2010) 8 SCR 396 and the earlier decision of this Court in C.M.A. No. 3101 of 2005 dated 13.12.2012, we are inclined to allow the appeal, thereby set aside the order of the Tribunal. Accordingly, the above Civil Miscellaneous Appeals stand allowed. No costs. Consequently connected Miscellaneous petitions are closed.

