IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.02.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR. JUSTICE R.KARUPPIAH

C.M.A. No.188 of 2015
and M.P.No.1 of 2015

M/s.Dunlop India Limited
No.512, MTH Road, Ambattur
Chennai - 600 053.
rep. by its Authorized Signatory
Mr.Chander Kothari

.. Appellant/ Appellant

- Vs -

1. The Customs, Excise & Service
   Tax Appellate Tribunal
   Haddows Road,
   Shastri Bhavan Annexe
   1st Floor, Chennai 600 006.
   by its Assistant Registrar

2. The Commissioner of Central Excise
   Chennai II Commissionerate
   No.,693, Anna Salai, Nandanam,
   Chennai - 600 035.

.. Respondents/ Appellate Authority/ Respondent

Appeal filed under Section 35-G of the Central Excise Act, against the order dated 24.11.2014 passed by Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Misc.Modify Order No.41997 of 2014 in Misc.Stay Order No.41628 of 2014 in E/Stay/41027/2013 in E/41402/2013-DB.

For Appellant : Mr.N.Viswanathan

For Respondents : Mr.A.P.Srinivas
Standing Counsel - R2

R1 :Tribunal

J U D G M E N T

(DELIVERED BY R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal is filed by the assessee as against the Miscellaneous Order of the Tribunal dated 24.11.2014, wherein the Tribunal extended the time to make the pre-deposit ordered in the stay petition.

2. The brief facts of the case are as follows:

The assessee is engaged in the manufacturing of tyres, tubes and flaps falling under Chapter sub-heading No.4011.10.90, 4012.10.20 and 4012.90.49 under Central Excise Tariff Act, 1985 and availing facility of credit of duty or cess paid on inputs, capital goods and input services used in the manufacture of the said products under the CENVAT Credit Rules, 2004. On a scrutiny of documents, the Department found that the assessee had not assessed their finished goods under Section 4A of the Central Excise Act, but undervalued the goods and wrongly availed the benefit of Cenvat credit. Hence, the Department issued show cause notice to the assessee alleging that the assessee had manufactured and cleared tyres, tubes and flaps by adopting Section 4 value instead of Section 4A; they had cleared tyres, tubes and flaps supposedly having lost their shelf life and cleared as scrap without proper permission in violation of Rule 21 of Central Excise Rules, 2002 and availed Cenvat Credit wrongly during the period from April 2006 to March 2009 based on non-available/ineligible documents/ineligible services. The assessee, in response to the said notice, filed reply. Not satisfied with the reply filed by the assessee, the Adjudicating Authority vide order-in-original No.20 of 2011 dated 28.02.2011 confirmed the demand of Rs.12,47,693/- being differential duty and penalty to the equal sum and Rs.16,26,556/- being the recovery of wrong credit of service tax and penalty to the equal sum.

3. Aggrieved by the order of the Adjudicating Authority dated 28.02.2011, the assessee filed an appeal along with a petition for stay before the Commissioner of Central Excise (Appeals), who, by order dated 20.12.2012 ordered pre-deposit of Rs.16,26,556/- by 17.1.2013. Since the assessee did not comply with the direction of pre-deposit even after extension of time was granted, the Commissioner (Appeals), by order dated 20.3.2013 dismissed the appeal for non-compliance of the condition of stay granted.

4. It appears that there was a further demand of Rs.1,41,807/- being the differential duty payable on the goods cleared under sub-section (1) of Section 11A of the Central Excise Act and penalty of Rs.20,000/-, which the Adjudicating Authority confirmed vide order-in-original No.02/2012 dated 14.02.2012.

5. The assessee filed an appeal against the order of the Adjudicating Authority dated 14.2.2012 before the Commissioner (Appeals), who allowed the same holding that the impugned goods were sold to institutional consumers and not for retail sale, in bulk, and were not in a packed conditions and hence, the provisions of Section 4A of the Central Excise Act would not apply. Accordingly, the Commissioner (Appeals), vide order dated 08.05.2013, set aside the order-in-original No.02 of 2012 dated 14.2.2012 passed by the Adjudicating Authority.

6. As against the order of the Commissioner (Appeals) dated 20.3.2013, the assessee pursued the matter before the Tribunal by filing an appeal along with a petition for waiver of pre-deposit.

7. The Tribunal, by order dated 22.9.2014 in Miscellaneous Order No.41628 of 2014, taking note of the financial hardship pleaded by the assessee, directed the assessee to make pre-deposit of Rs.7,00,000/- and report compliance on 24.11.2014. Again the assessee filed a petition seeking modification of the miscellaneous order dated 22.9.2014. The Tribunal, by order dated 24.11.2014 in Miscellaneous Order No.41997 of 2014, held as follows:

> "4. We find that the Tribunal at the time of hearing the stay petition, the applicant submitted that they availed the credit on the basis of original documents which were lost in floods. Prima facie, the Tribunal observed that there is no material placed that they have availed the credit on the basis of original documents. We find that the applicant failed to produce the original documents to the audit party for verification of the documents, which was not disputed by the learned counsel. So, we do not find any merit in the modification application.
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> 5. However, after considering the submission of both sides, we extend the period of compliance by further four weeks. The applicant is directed to report compliance on 29.12.2014. Miscellaneous application is disposed of."

8. Aggrieved by the said order of the Tribunal, even after granting extension of time to make the pre-deposit, the present Civil Miscellaneous Appeal has been filed.

9. Learned counsel appearing for the appellant submitted that the assessee is suffering from financial hardship on account of long layoff and continued lockout. He further submitted that the company was under winding up and the proceedings are pending before the Supreme Court.

10. Heard learned counsel appearing for the appellant and perused the materials placed before this Court.

11. It is seen from the order of the Tribunal that even though the assessee pleaded financial hardship before the Tribunal, the assessee did not produce any documents to prove the same. Before us also, learned counsel appearing for the appellant pleaded financial hardship but no details or documents have been furnished in support of such a plea. We find no good reason to accept such a mere statement of financial hardship as a cause to modify the order of pre-deposit. The order of the Tribunal seems to be justified in the facts and circumstances of the case. In the absence of any materials placed before this Court, we see no reason to interfere with the order passed by the Tribunal.

12. Learned counsel appearing for the appellant pleaded time to deposit the pre-deposit amount ordered by the Tribunal.

13. In view of the foregoing reasons, we pass the following order:

(i) The order of the Tribunal stands confirmed and this Civil Miscellaneous Appeal stands dismissed. No costs.

(ii) The appellant is granted time till 31.3.2015 to make the pre-deposit as ordered by the Tribunal.

(iii) Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Asst.Registrar (J)

/true copy/

Sub Asst. Registrar

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To

1. The Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench, 1st Floor, Shastri Bhavan Annexe
26, Haddows Road, Chennai 600 006.

2. The Commissioner of Central Excise
Chennai II Commissionerate
No.,693, Anna Salai, Nandanam,
Chennai - 600 035.

1 cc to mr.N.Viswanathan, Advocate, sr. 11084
1 cc to Mr.A.P.Srinivas, Advocate Sr. 10727

C.M.A. No.188 of 2015
and M.P.No.1 of 2015

SR (CO)
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