IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 30.01.2015

CORAM

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

C.M.A. NO. 44 OF 2011

M/s.Sakthi Industries
No.53, Royapettah High Road
Mylapore, Chennai – 4. .. Appellant

- Vs -

The Commissioner of Central Excise
Chennai II Commissionerate
Chennai - 35. .. Respondent

Appeal filed under Section 35-G of the Central Excise Act against the order dated 6.10.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in E/Appeal No.125/02.

Against the order of the Commissioner of Central Excise (Appeals), Chennai dt.4.2.02 and made in order in Appeal No.4/02 (M-II)

Against the order of the Assistant Commissioner of Central Excise, Chennai I Division; Chennai II, Commissionerate, Chennai-35 dt.31.8.2001 and made in Original No.41/2001.

For Appellant : Mr. Arun Kurian Joseph

For Respondent : Mr. E.Vijay Anand

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Appellate Tribunal in allowing the appeal filed by the Revenue, the assessee is before this Court challenging the said order by filing the present appeal.

2. The appeal was admitted by this Court and the core issue raised for consideration before this Court is whether the classification of water filters manufactured and cleared by the appellant/assessee to be assessed under CET sub-heading 7323.10 as tableware and kitchenware, as claimed by the assessee or under CET

sub-heading 8421.10, as filtering or purifying machinery or apparatus, as contended by the Revenue.

3. On the basis of the show cause notice and the subsequent order of the Department, the assessee preferred appeal to the Commissioner (Appeals), who held that the assessee is entitled to claim the benefit under sub-heading 7323.10 and rejected the contention of the Department. The Department, aggrieved by the said order, preferred appeal before the Tribunal. The Tribunal held that the products manufactured by the assessee would fall under the CET sub-heading 84.21 and, therefore, set aside the order of the Commissioner (Appeals) and allowed the appeal. Aggrieved by the said order, the assessee is before this Court by filing the present appeal.

4. Heard the learned counsel appearing for the appellant/assessee and the learned standing counsel appearing for the respondent/Department.

5. While the assessee contended that it is entitled to the benefit of Notification 4/97, on the contrary, the Department, contends that the benefit of such notification is not available to the assessee. The Tribunal, while relying upon HSN notes covering purifiers, also by relying upon the decision in CCE, Chennai – Vs – Vasundara Enterprises (2008 (221) ELT 51) set aside the order of the Commissioner (Appeals). However, in the present appeal, the objection made by the respondent is that the issue is only with regard to rate of duty and in such circumstances, appeal will lie only to the Supreme Court and not otherwise.

6. For availing the benefit of the Notification 4/97, the goods would stand exempted as provided under Section 35-G of the Act. The relevant provision of the Act reads as under :-

> “35G. Appeal to High Court. -
>
> (1) An appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law.
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> (2) The Commissioner of Central Excise or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court and such appeal under this sub-section shall be -
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> (a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of Central Excise or the other party;

(b) accompanied by a fee of two hundred rupees where such appeal is filed by the other party;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question :

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in sub-section (1).

When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section."

7. As evident from the objection as made by the Department, the issue pertains to rate of duty that is payable by the assessee. Therefore, the objection as raised by the respondent is liable to be sustained, more so, in view of the decision of the Supreme Court in

Navin Chemicals Manufacturing & Trading Co. Ltd. - Vs – Collector of Customs (1993 (68) ELT 3 (SC)), which decision has been followed by this Court in Commissioner of Central Excise – Vs - Vadapalani Press (2014-TIOL-2208-HC-MAD-CX).

8. In such circumstances, while this Court is not inclined to deal with the matter, while disposing off the present appeal as not maintainable, is inclined to grant liberty to the appellant/assessee to pursue the matter before the Supreme Court, if so advised.

9. Accordingly, this appeal is disposed of with liberty to the assessee/appellant to move before the Supreme Court, if so advised. However, there shall be no order as to costs.

Sd/-
Assistant Registrar
Dated:25.2.15

True Copy

Sub Assistant Registrar

To

1. The Commissioner of Central Excise
Chennai II Commissionerate
Chennai 600 035.

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

3. The Commissioner of Central Excise, Appeals
Chennai.

+1 cc to Mr.E.Vijay Ananad, Advocate,SR.4872

+1 cc to Mr.Arun Kurian Joseph, Advocate,SR.4963.

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