IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.945 of 2011

M/s A.R.Metallurgicals P.Ltd.,
61st Km., Bangalore-Krishnagiri Road
Nallaganakothapalli Village
Shoolagiri Block
Hosur, Krishnagiri District ... Appellant

-vs-

1. The Customs, Excise and Service Tax Appellate Tribunal
Shastri Bhavan Annexe
Chennai

2. The Commissioner of Central Excise
Chennai III Commissionerate
Mahatma Gandhi Road
Chennai ... Respondents

Memorandum of Grounds of Civil Miscellaneous Appeal under Section 35-G of the Central Excise Act, against the Final Order No.1105 of 2010 in Appeal No.E/563/09 dated 21.10.2010 passed by the Customs, Excise and Service Tx Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.Jayachandran

For Respondents : Mr.T.Chandrasekaran
Senior Panel Counsel

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This civil miscellaneous appeal, at the instance of the assessee, was admitted on the following substantial questions of law:-

"(1) Whether in the facts and circumstances of the case, the payment of duty utilizing CENVAT credit is a valid discharge of duty liability under the Central Excise law?

(2) Whether in the facts and circumstances of the case, the Rule 8(3A) of Central Excise Rules introduced with effect from 1.6.2006 be made applicable to the period where an assessee fails to pay or discharge the duty liability before or after 1.6.2006?

(3) Whether in the facts and circumstances of the case, the second respondent can adjudicate the case by invoking Rule 8(3A) of Central Excise Rules, by issue of show cause notice dated 7.11.2007 for the period from October, 2006 to March, 2007 during which period there was no default in payment of duty?

(4) Whether in the facts and circumstances of the case, the Tribunal is justified in retaining the penalty under Rule 25 of Central Excise Rules, but reducing to Rs.5,00,000/- when the penalty under Section 11AC was set aside and Rule 25 of CE Rules is subject to the provisions of Section 11AC of the Central Excise Act?''

2. The appellant-assessee has challenged the order of the Tribunal, holding as follows:-

''2. We find that with the amendment to Central Excise Rules, 2002 vide Notification No.13/2006-CE dated 1.6.2006, a defaulting assessee is liable to pay excise duty for each consignment at the time of removal, without utilizing CENVAT credit, until the date for payment of the outstanding amount including interest thereon. Since the assessee continued to utilize CENVAT credit instead of paying duty through PLA, the demand requires to be sustained. We order accordingly.
3. As regards penalty under Section 11AC, we set aside the same in the light of the Tribunal's decision in Krishna Chemicals vs. CCE, Ahmedabad - 2009 (244) ELT 580 and Sai Packaging Industries vs. CCE, Chennai, 2010 (253) ELT 107. Penalty under Rule 25 is, however, retained but reduced to Rs.5,00,000/- (Rupees five lakhs only) in the light of the Tribunal's order cited supra.
4. The appeal is thus partly allowed as above.''

3. Heard the learned counsel for the appellant and the learned Senior Panel Counsel for the respondents.

4. Since the issue raised in this civil miscellaneous appeal has already been decided by the Gujarat High Court in the judgments in

Indsur Global Ltd., v. Union of India, 2014 (310) E.L.T.833 (Guj.) and in Precision Fasteners Ltd., v. Commissioner of Central Excise, 2014 TIOL 2211 HC-AHM-CX, declaring that the condition contained in sub-rule (3A) of Rule 8 of the Central Excise Rules, 2002 for payment of duty without utilizing the CENVAT credit till an assessee pays the outstanding amount including interest is unconstitutional and that the subsequent proceedings initiated by the Department for demanding tax were set at naught, which were followed by us in a batch of writ petitions in W.P.Nos.2506 of 2011 etc., dated 27.3.2015 (M/s Malladi Drugs & Pharmaceuticals Ltd., Ranipet etc., etc., v. Union of India rep. by its Secretary, Ministry of Finance etc.) deciding the issue in favour of the assessees therein for the reasons stated therein, following the same, this civil miscellaneous appeal is allowed and the substantial questions of law are answered in favour of the assessee and against the Department. Consequently, M.P.No.1 of 2011 is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs, Excise and Service
Tax Appellate Tribunal
Shastri Bhavan Annexe
Chennai

2. The Commissioner of Central Excise
Chennai III Commissionerate
Mahatma Gandhi Road
Chennai

3. The Assistant Commissioner of Central Excise
Hosur - I Division, Thally Road, Hosur - 635 109.

+1cc to M/s.T.Chandrasekar, Advocate, S.R.No.17463

C.M.A.No.945 of 2011

MP(CO)
CA(27/05/2015)