

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.03.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MRS. JUSTICE S.VIMALA

C.M.A. NO. 1117 OF 2008

The Commissioner of Central Excise
6/7, A.T.D. Street, Race Course Road
Coimbatore 641 108.

...Appellant

- Vs -

1. M/s.Lakshmi Machine Works Ltd.
MTD & Foundry Division
Arasur Post, Coimbatore 641 107.
2. The Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
26, Haddows Road
Chennai 600 006.

...Respondents

Appeal filed under Section 35G of the Central Excise Act against the order dated 23.8.07 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1041/2007.

सत्यमेव जयते

For Appellant : Mr. E.Vijay Anand

For Respondents : Mr. T.Ramesh for R-1

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JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee, the appellant/Revenue is before this Court by filing the present appeal. This Court, vide order dated 28.3.08, admitted the appeal on the following substantial question of law :-

"Whether the Honourable CESTAT was correct in holding that 'Capital Goods removed as such' would mean "without putting the machinery to any use"?"

2. The facts, in a nutshell, are as hereunder :-

The assessee received one 'speed frame lapping machine' in the year 1997 and took credit of Rs.1,37,581/= under the head capital goods. After usage of the machine for about 8 years in the manufacture of final products, the assessee cleared the same by reversing the credit to the extent of Rs.42,400/=. In view of such removal of goods and availment of Cenvat Credit, a show cause notice was issued to the assessee by the Deputy Commissioner of Central Excise, Coimbatore IV Division seeking why the differential amount of Rs.95,181.26 should not be demanded. However, in view of the decision of CESTAT in the case of M/s.Madura Coats - Vs - CCE, Tirunelveli (2005 (109) ELT 450 (Tri-Bang.)), the said proceedings were dropped. Aggrieved against the said order, the Revenue preferred appeal before the Commissioner (Appeals).

3. Upon hearing the parties, the Commissioner (Appeals) held that in terms of Rule 3 (5) of the CENVAT Credit Rules, 2004, when capital goods on which Cenvat credit had been taken were removed as such from the factory, an amount equal to the credit availed in respect of such capital goods had to be paid. Accordingly, the Commissioner (Appeals) allowed the appeal filed by the Revenue against which the assessee preferred appeal to the Tribunal.

4. The Tribunal, on a careful consideration of the case and upon hearing either side and carefully considering the decisions placed before it held in favour of the assessee. For better clarity, the relevant portion of the order, is quoted hereinbelow :-

"5. I have carefully considered the records of the case and rival submissions. I find that the appellants had removed 'used capital goods' on payment of Rs.42,400/=. In terms of the ratio of the decision of the Tribunal in Madurai Coats case (supra), the appellants are not required to reverse any credit when they removed capital goods after putting it to use for

about 8 years. The appellants were required to reverse the credit equal to the credit originally availed only if the capital goods were removed "as such" which meant without putting the machinery to any use. In the facts of the present case, therefore, the appellants were not required to reverse any credit. In the circumstances, the impugned order demanding differential credit of Rs.95,181/=, interest thereon and imposing penalty on the appellant is not sustainable. Accordingly, the impugned order is set aside and the appeal is allowed."

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused the materials available in the typed set of documents.

6. It is fairly conceded by the learned standing counsel for the appellant that the issue raised in the present case is squarely covered by the decision of this Court in Commissioner of Central Excise, Salem - Vs - M/s.Rogini Mills Ltd. (2011 (264) ELT 367 (Mad.)).

7. Similar question of law fell for consideration before this Court in Rogini Mills case (supra), wherein the 1st question of law framed is identical to the one framed in the case on hand. The questions of law framed are quoted hereunder :-

"1) Whether the expression "as such" appearing in Rule 3 (4) (c) of the Cenvat Credit Rules, 2002, would cover used as well as unused capital goods or not?

2) Whether the assessee is required to reverse credit equivalent to credit taken when used capital goods are removed from the factory or not?"

8. From a careful perusal of the judgment in Rogini Mills case (supra), it is clear that the view as propounded by the Tribunal was upheld by this Court on the above substantial questions of law raised. For better clarity, the relevant portion of the judgment in Rogini Mills case (supra) is extracted hereinbelow :-

"8. As far as the order of the Larger Bench of the Tribunal reported in 2008 (232) ELT 29 is concerned, we find that though a reference has been made to the addition of the proviso to Rule 3(5) with effect from 13.11.2007, the relevancy of the said addition providing for making an assessment in a depreciated

manner i.e. reducing the Cenvat credit at the rate of 2.5% for each quarter of a year from the date of taking Cenvat credit has not been examined. In the circumstances, the order of the Tribunal impugned in this appeal cannot be found fault with.

9. We, therefore, do not find any scope to entertain this appeal, inasmuch as the questions of law sought to be raised at the instance of the appellant have already been correctly answered by the Tribunal itself and therefore, we do not find any need or necessity to entertain the said questions of law once over again. The order of the Tribunal in remanding back to the original authority for re-determination of the amount after allowing depreciation to the extent allowed in the case law cited in its order is sustained. The appeal fails and the same is dismissed. Consequently, M.P.No.1 of 2010 is also dismissed."

9. This Court is in agreement with the law as propounded by this Court in the above referred to decision. Accordingly, the substantial question of law is answered in favour of the assessee and against the Revenue.

10. In the result, this appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Central Excise
6/7, A.T.D. Street, Race Course Road
Coimbatore 641 108.

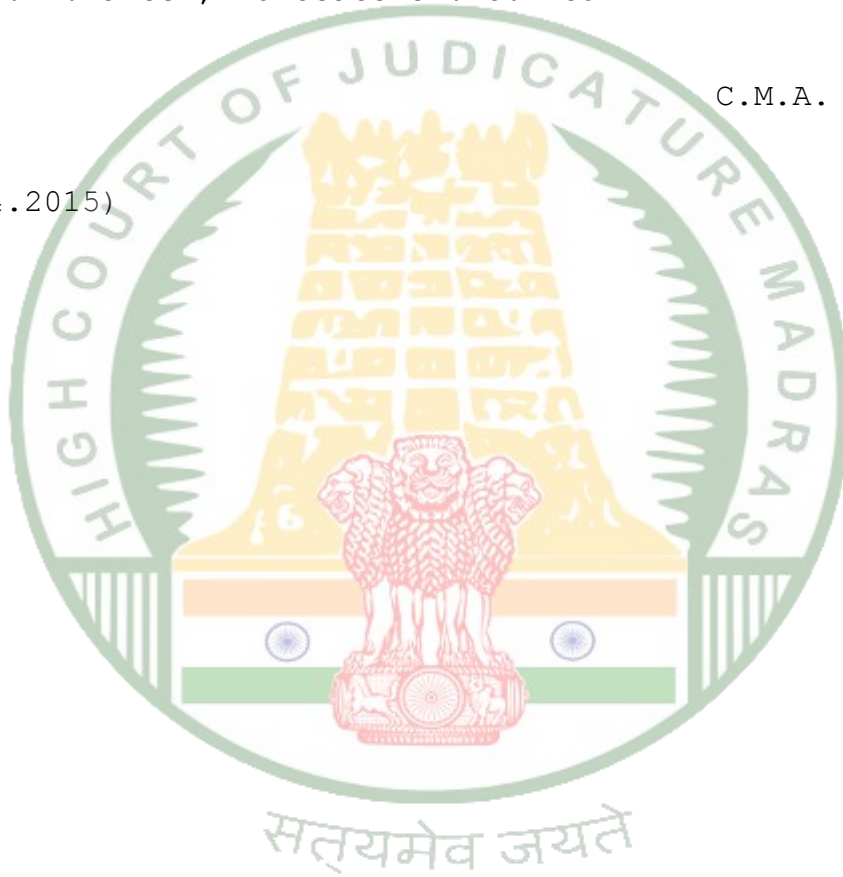
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1 CC to Mr. E.Vijay Anand, Advocate SR.No. 14133

1 CC to Mr. T.Ramesh, Advocate SR.No. 13974

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KU (CO)
PSI (07.04.2015)



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