

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.06.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. Nos. 1331 and 1332 of 2007

Commissioner of Central Excise,
Pondicherry .. Appellant in both C.M.As/Appellant

- Vs -

M/s.Vijayashree Instaprint
Machinery. .. Respondent in both C.M.As./Respondent

Appeals filed under Section 35G of the Central Excise Act, 1944 against the order dated 01.09.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order Nos.1188 and 1189 of 2005 against the order in Appeal No.13 and 14/04 (P) dt.30.1.04 passed by the Commissioner of Central Excise (Appeals) Chennai.

For Appellant : Mr. Vijay Anand

For Respondents: Mr. T.R.Ramesh

C O M M O N J U D G M E N T
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order passed by the Tribunal in dismissing the appeals filed by the Revenue, the Revenue/appellant is before this Court by filing the present appeals. This Court, vide order dated 02.07.2007, while admitting the appeals, framed the following substantial questions of law for consideration :-

"1) Whether the Commissioner (Appeals) and the Appellate Tribunal has failed to appreciate, the true purport of the Modvat Scheme and the procedure enunciated under Notification No.214/86-CE which govern the movement of inputs for job worked goods and is under obligation to return the goods without payment of duty where as by the impugned order the duty paid by the job worker was allowed as credit which is against the letter and spirit of law?

2) Whether the Commissioner (Appeals) and the Appellate Tribunal is right in allowing the duty paid

by the job worker as credit to the assessee which is not actually the duty leviable on the job worked goods but the said duty is the amount of duty attributable to the duty involved on the inputs utilized in the manufacture of job worked goods by the job worker which cannot be passed as the duty paid by the job worker and cannot be treated as duty in the Modvat Scheme?

3) Whether the Commissioner (Appeals) and the Appellate Tribunal has failed to appreciate the relevant provisions of law that the job worked goods are exempt under Notification No.214/86 CE and the job worked goods have to be cleared under 57F(4) Challans without payment of duty and not under 52A invoice?"

2. The respondent/assessee is engaged in the business of manufacturing mini-offset printer falling under C.H.8443.10. The assessee had arranged to clear certain modvat input directly to their job worker. The control panel which is an input for the finished product of the assessee were manufactured at the job worker's premises and returned to the assessee. During the course of manufacture of the control panel, the job worker added electric wires as input. The job worker raised invoice under Rule 52(A) instead of Rule 57F(4) Challan and indicated the cost of input processing charges as the value of control panel and discharged central excise duty on the items utilised by them. The Department disallowed the credit for the reasons stated in the two show cause notices. In the show cause notices issued, it was alleged that the assessee had not received back the processed inputs under the duplicate copy of Rule 57F(4) challan and had contravened the provisions of Rule 57F(9) and the credit availed on such inputs appeared to be irregular. Hence, it was proposed to demand duty and penalty.

3. After due process of law, the Adjudicating Authority confirmed the demand of Rs.27,488/- and Rs.73,294/- respectively and imposed penalty of Rs.1,000/- and Rs.2,000/- respectively. Aggrieved by the same, the assessee preferred appeals before the Commissioner (Appeals), who after following the ratio laid down in various decisions, allowed the appeals. As against the said order of the Commissioner (Appeals), the Department has filed appeals before the Tribunal. The Tribunal, after examining the records and after hearing both sides, dismissed the appeals holding that it was taken as credit only when they received the control panel from the job worker and this credit was clearly admissible to the assessee. Aggrieved by the said order of the Tribunal, the Revenue is before this Court.

4. Learned counsel appearing for the respondent/assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have filed appeals in view of the litigation policy of the Government issued by

the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC, wherein the following instruction has been issued :-

"5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs.1 Lakh with mandatory penalty of Rs.1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs.1 Lakh. Similarly, if the duty involved in a case is Rs.2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

5. It is contended by the learned counsel for the respondent that in view of the above instruction, for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs.2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Adjudicating Authority is well within the limit of Rs.2 Lakhs, the present appeals, filed by the Department, are not maintainable.

6. Heard the learned standing counsel appearing for the appellant/Department and the learned counsel appearing for the respondent/assessee and perused the materials available on record.

7. We find, on fact that the Commissioner (Appeals) as well as the Tribunal have taken a clear finding that the respondent/assessee had not wrongly availed the credit and therefore there appears to be a question of fact. Further more, in view of the preliminary objection raised by the learned counsel for the respondent that the monetary limit to prefer an appeal is pegged at Rs.2,00,000/- by the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC, we are not inclined to entertain the appeals.

8. It is seen from the records that the monetary limit having been fixed at Rs.2 Lakhs, even as per the order of the Adjudicating Authority, the demand and penalty being less than Rs.2 Lakhs, the appeals are not maintainable.

9. The above-said circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain the above appeals. Accordingly, in the light of the Board's circular mentioned supra, the above appeals are dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. Customs, Excise & Service Tax Appellate Tribunal
South Zonal Bench Shastri Bhavan Annexe
1st Floor, No.26, Haddows Road, Chennai 600 006.

2. The Commissioner of Central Excise, Pondicherry.

3. The Commissioner of Central Excise (Appeals)
Chennai.

Copy to:
the Section Officer,
V.R. Section, High Court, Madras.

+1 cc to Mr. T.R. Ramesh, advocate, SR.28458.

Skv(co)
krd 30/6

C.M.A. NOs.1331 and 1332 of 2007

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