

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal No.1182 of 2008

The Commissioner of Central Excise,
Chennai - II Commissionerate,
No.692, MHU Complex, Anna Salai,
Nandanam, Chennai - 600 035. Appellant/Respondent

versus

1. Integral Coach Factory,
Ministry of Railways,
Chennai - 600 038. 1st Respondent/Appellant

2. Customs, Excise and Service Tax
Appellate Tribunal,
South Zone Bench, Shastri Bhavan Annexe,
1st Floor, No.26, Haddows Road,
Chennai - 600 006. 2nd Respondent

PRAYER: APPEAL under Section 35-G of the Central Excise Act,1944
against the final order dated 03.09.2007 made in Final Order No.1106
of 2007 in Appeal No.E/636/2001 on the file of the Customs, Excise
and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.S.Xavier Felix

For Respondent : Mr.V.G.Suresh Kumar - R1

J U D G M E N T
(Judgment of the Court was delivered by R.SUDHAKAR, J.)

This Civil Miscellaneous Appeal filed as against the order of the
Tribunal was admitted by this Court on the following substantial
questions of law:

"1. Whether the Tribunal is right in law in holding that the first respondent is entitled to the exemption under the notification No.62/95 CE dated 16-03-1995 and No.89/95 CE dated 18-05-1995 when such notifications stipulate certain conditions which were admittedly not complied with by the first respondent?

2. Whether the Tribunal is right in law in deciding the appeal without recording a finding on the applicability as otherwise of Notification No.62/95 CE dated 16.03.1995 and 89/95 CE dated 18/05/1995 in the case of the first respondent?"

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

The first respondent Integral Coach Factory (ICF) belonging to the Central Government is engaged in the business of manufacturing passenger coaches both self-propelled and non-propelled, steel freight containers and parts of passenger coaches for railways under Chapter 86 of CET 1985. They are availing exemption under Notification No.62/95 CE dated 16.3.1995. Alleging that ICF had cleared ferrous and non-ferrous scrap without payment of Central Excise duty, show cause notice was issued proposing to demand duty along with interest and penalty. The first respondent/assessee replied to the said show cause notice stating that they are eligible for exemption under Notification No.89/95 CE dated 18.5.1995. The Adjudicating Authority, after due process of law, passed an order confirming the demand holding that the assessee was not eligible to claim the benefit of exemption under Notification No.89/95 CE dated 18.5.1995. Aggrieved by the said order of adjudication, the assessee filed an appeal before the Tribunal. The Tribunal after considering the Notification and the proviso and Explanation to the Notification allowed the claim of the assessee holding as follows:

"3. After giving careful consideration to the submissions, we have found valid challenge in this appeal. A decision would rest on the interpretation of the proviso to Notification No.89/95-CE *ibid*. The case of the Revenue is that, as the assessee had cleared excisable goods (coaches, coach components and containers) on payment of duty during the period of dispute, their claim for the benefit of the Notification in respect of the waste and scrap which were generated in the course of manufacture of such goods is barred by the proviso. It is the case of the assessee that the payment of duty on coaches, coach components and containers during the said period was by mistake and that the goods would not become "other than exempted goods" merely by reason of the same having been

erroneously cleared on payment of duty. Their argument is that goods exempted under Notification No.62/95-CE (S.No.16 (i) of the Table) manufactured by a factory belonging to the Central Government remained "exempted goods" within the meaning of this expression given under the Explanation to the Notification. We have found force in this argument. As per the Explanation, "exempted goods" means excisable goods which are chargeable to 'nil' rate of duty or exempted from the whole of the duty of excise leviable thereon by any other Notification issued under sub-rule (1) of Rule 8 of the Central Excise Rules, 1944 or sub-section (1) of Section 5A of the Central Excise Act, 1944. It is not in dispute that coaches, coach components and containers, all falling under Chapter 86 of the Central Excise Tariff Schedule were exempt from payment of duty under S.No.16(i) of the Table annexed to Notification No.62/95-CE ibid during the material period. Erroneous payment of duty on any such goods would not render the goods "other than exempted goods". Both in the show-cause notice and in the impugned order, "exemption" was misconceived. Apparently, the department (in the show-cause notice) and the Commissioner (in the impugned order) overlooked the Explanation to Notification No.89/95-CE. The proviso to Notification No.89/95-CE was not attracted in this case and the assessee was entitled to the benefit of the Notification and consequently the demand of duty is not sustainable. We need not look into the limitation issue.

4. In the result, the impugned order is set aside and the appeal is allowed."

3. Aggrieved by the order of the Tribunal, the Department has filed the present appeal.

4. Heard learned Standing Counsel appearing for the appellant and the learned counsel appearing for the first respondent and perused the materials placed before this Court.

5. Before going into the merits of the case, we extract Notification No.89/95-CE dated 18.5.1995, which is necessary to decide the issue:

" Waste parings and scrap arising in the course of manufacture of exempted goods and falling within the schedule to the Central Excise Tariff Act, 1985, are exempted from the whole of excise duty leviable thereon,

which is specified in the said schedule, provided that nothing contained in this Notification shall apply to waste, paring and scrap cleared from a factory in which any other excisable goods other than exempted goods are cleared.

6. The assessee availed the benefit of this Notification in respect of clearance of waste scraps arising out of manufacture of exempted goods. Though exemption in respect of manufactured goods is available in S.No.16(i) of the Table annexed to Notification No.62/95-CE dated 16.3.1995 (as amended), the problem arose because the first respondent cleared the exempted goods on payment of duty during the period in dispute. The erroneous payment of duty caused the Department to hold that the goods are other than exempted goods and therefore demand was made. On adjudication, the demand was sustained. The Tribunal came to hold that the show cause notice as well as the adjudication order proceeds on the misconception of the term 'exemption'. In otherwords, the Tribunal relying upon the Explanation to Notification No.89 of 1995-CE dated 18.05.1995 came to the conclusion that since the manufactured goods are exempted goods, the benefit of Notification No.89 of 1995 dated 18.5.1995 would be applicable. The Tribunal rightly held that proviso to this Notification would not apply to the facts of the case and the erroneous payment of duty would not render the goods other than exempted goods. So long as the goods manufactured are exempted goods, waste parings, scrap arising in the course of the manufacture of exempted goods would be entitled for exemption as per Notification No.89 of 1995 CE dated 18.5.1995. we approve this finding of the Tribunal as correct.

7. In view of the above, we hold that the first question of law is answered in favour of the assessee and against the Revenue. We reject the second question of law, as we find that the Tribunal had rendered a finding with regard to the relevance of both the Notifications. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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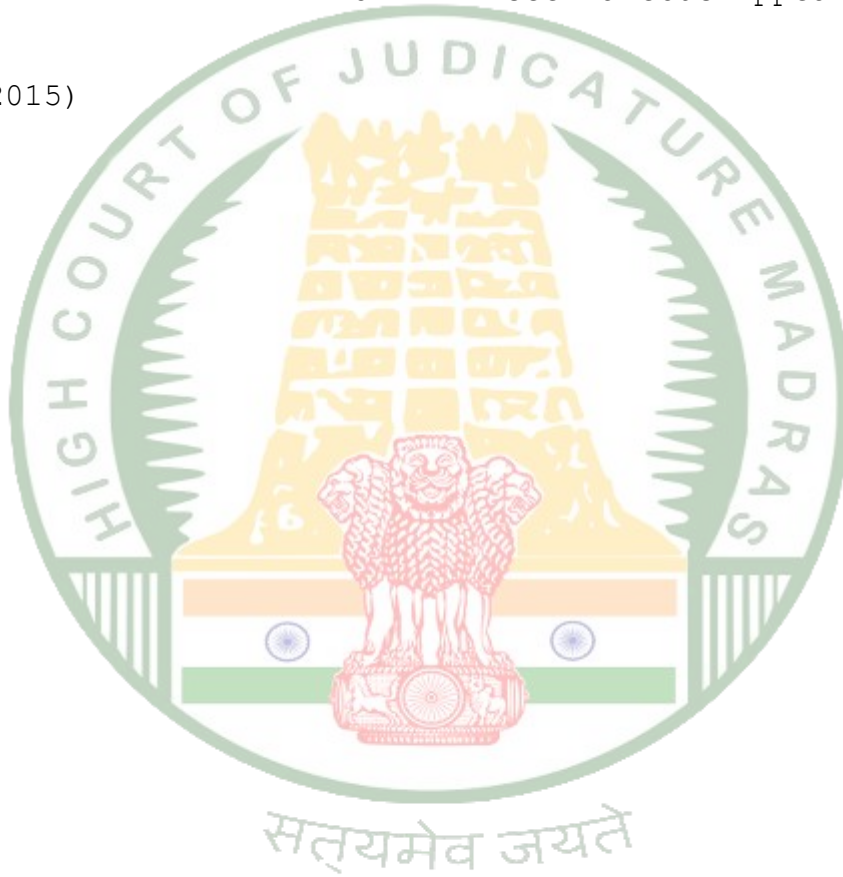
To

Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annexe, No.26, Haddows Road,
Chennai - 600 006.

+1cc to Mr.S.Xavier Felix, Advocate, S.R.No.28947
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VGI(CO)
CA(17/08/2015)



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