

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. 1216 OF 2009

Commissioner of Central Excise
Chennai - I Commissionerate
26/1 (Old No.121), M.G. Road
Chennai 600 034.

... Appellant/Respondent

- Vs -

M/s.Castrol India Ltd.
10, Ellaya Mudali Street
Tondiarpet
Chennai 600 081.

... Respondent/Appellant

Appeal filed under Section 35G of the Central Excise Act against the order dated 20.10.08 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1168 of 2008.

For Appellant : Mr.Rajinish Pathiyil SGCSC

For Respondents: No Appearance

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 9.6.09, while admitting the appeal, framed the following substantial questions of law for consideration :-

"i) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in setting aside the orders of the lower authorities without considering the amended provisions of Section 4 of the Central Excise Act and new provision of Rule 7 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000?

ii) Whether on the facts and circumstances of the case, the Appellate Tribunal is right in allowing the assessee appeal when the respondent/assessee is not prepared to provide the correct transaction value, which is against the new provision of Rule 7 of the

Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000?"

2. When the matter was taken up for hearing, it is fairly stated by the learned counsel for the appellant/Revenue that though two substantial questions of law have been framed, the scope of appeal is not on the legal issue as propounded in the questions of law framed, but only to the extent that there is an inconsistency in the order of the Tribunal passed in Final Order No.1168/08 dated 20.10.08 in Appeal E/PD/141/08 in E/Appeal No.172/08. Accordingly, this Court is not going into the questions of law as framed above, but is only inclined to deal with the aspect relating to the inconsistency in the order of the Tribunal.

3. In the case on hand, the respondent/assessee is manufacturing lubricating oils and allied preparations and the products are stock transferred to various depots and from there the goods are sold on payment of duty on provisional basis. While finalising the provisional assessment, the original authority disallowed the abatement towards cash discount, quantity discount, distributors' discount and non-recoverable sales tax. As a result, differential demand was raised. It is recorded by the Tribunal in the earlier Final Order Nos.445 and 446/08 dated 7.5.08 that the adjudicating authority had followed the amended provision of Section 4 of the Central Excise Act and relevant provisions of the Central Excise Valuation rules, 2007, viz., Rule 7 and that the assessee had paid duty on the old valuation rules.

4. It appears that the very same assessee in proceedings before the Tribunal in Final Order Nos.445 & 446/2008 dated 7.5.08 pleaded valuation on normal transaction value as per the amended provisions of law and furnished calculations and, consequently claiming refund of duty. After considering the relevant provisions and the Board Circular No.643/34/02-CX dated 1.7.02, the Tribunal, in its earlier order, remanded the case by holding as under :-

"4. It appears from the submissions of the appellants' representative and the SDR that this matter must be remanded to the original authority, now that the Revenue has acknowledged the assessee's preparedness for providing the actual figures for the purposes of claiming deduction from the assessable value. Accordingly, the orders of the lower authorities are set aside and the original authority is directed to pass fresh orders of finalization of provisional assessments after considering the relevant particulars furnished by the assessee and the Chartered Accountant's certificates in proof thereof, and after giving them a reasonable opportunity of being heard."

5. The above remand order is relatable to the calendar year 2004-05. In the present case, we are concerned with the calendar year 2007. The Tribunal, in view of the earlier order passed in respect

of the very same assessee, viz., Final Order Nos.445 & 446/08 dated 7.5.08, allowed the appeal for the present calendar year, by way of remand by recording as follows :-

"3. In the present case, for the calendar year 2007, the assessee's request for provisional assessment was declined by the original authority and the decision of that authority was sustained by the Commissioner (Appeals). Hence the present appeal of the assessee. It appears from the written submissions of the appellant that, in the wake of the order of the original authority, they finalized their provisional assessment suo motu and paid differential duty. In the circumstances, according to the appellant, the application for stay of operation of the impugned order has become infructuous.

4. After considering the case of the appellant and the submissions of the SDR, we find that valid reasons have not been made out by the Department in having deviated from the normal procedure which is in vogue since 1996. For 2007 also, it appears, the assessee was not possessed of discounts at the time of clearance of the goods to their depot/consignment agents and hence sought permission of the Department for provisional assessment. It was in similar circumstances that provisional assessment was allowed in the past, a fact noted by this Bench in Final Order Nos.445 & 446/2008 *ibid*. Having accepted the said final order, it is not open to the Revenue to claim to the contra in relation to the calendar year 2007. We have found the orders of the lower authorities to be legally and factually incorrect and hence set aside the same. The appeal stands allowed. It is, however, made clear that it will be upto the original authority to verify the correctness of finalization of assessments done by the assessee."

6. The grievance of the Revenue is that in the present order of the Tribunal, the verification before the original authority is not qualified as has been done in the previous order. On a reading of both orders passed by the Tribunal, there appears to be some justification in the abovesaid grievance of the Revenue. It is clear from the record that the remand order in the present case does not impose conditions as imposed in the earlier order dated 7.5.08. This Court is of the considered view that the order in the present appeal, if it is following the earlier order, should be in consonance with the directions contained in the earlier order with regard to finalisation of provisional assessment, whereby the assessee is bound to furnish documents to support the claim in the finalisation of provisional assessment. However, such is not the case in the present order, which does not qualify any verification before the original authority. In such circumstances, this Court holds that the order of the Tribunal, impugned in the present appeal, should be in consonance with para-4 of the Final Order Nos.445 & 446/2008 dated 7.5.08.

7. We, therefore, hold that the order of the Tribunal not being in consonance with the earlier order passed in Final Order Nos.445 & 446/08 dated 7.5.08, the appeal filed by the Revenue needs to be allowed by remanding the matter back to the original authority. Accordingly, the order of the Tribunal is modified to the extent that the matter is remanded back to the original authority in terms of the earlier order passed in Final Order Nos.445 & 446/2008 dated 7.5.08.

8. The appeal is allowed by way of remand to the original authority. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. Commissioner of Central Excise
Chennai -I Commissionerate
26/1 (Old No.121), M.G. Road
Chennai 600 034.

2. The Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench, Chennai.

+1 cc to M/s.Rajnish Pathiyil, Advocate, SR.14236.

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