

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.04.2015

CORAM

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

C.M.A. NO. 1535 OF 2010

Commissioner of Central Excise
& Service Tax
1, Williams Road, Cantonment
Tiruchirappalli - 620 001

.. Appellant

- Vs -

1. M/s. The India Cements Ltd.
Dalovavoi Works, Cement Nagar Post
Senthurai Taluk, Perambalur Dt.
2. Customs, Excise & Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexe - I
1st Floor, 26, Haddows Road
Chennai 600 006.

.. Respondent

Appeal filed under Section 35-G of the Central Excise Act against the order dated 6.11.09 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1615/2009. arising against order dated 22.09.2003 of the Commissioner of Customs & Central Excise (Appeals -II) Trichirappalli in A.No.459 of 2003 against Order dated 29.09.2000 of the Asst.Commissioner of Central Excise and Service Tax, Tiruchirappalli in O.No.97 of 2000.

For Appellant : Mr. T.Chandrasekaran

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 20.08.10, while admitting the appeal, framed the following substantial questions of law for consideration.

"1) Whether the CESTAT is right in extending credit of duty paid on the parts of surface miners used in the mines lying outside the factory of the assessee who have not proved that the mines are captive mines on applying the ratio of the decision in the case of Vikram Cement - Vs - CCE, Indore (2006 (197) ELT 145 (SC)), wherein the Supreme Court has laid down that if the mines are not captive mines but they supply to various other cement companies of different assessee, Modvat/Cenvat Credit on capital goods used in such mines will not be available to the concerned assessee under the appropriate Modvat/Cenvat Rules?

2) Whether the CESTAT is right in extending credit of duty paid on CCTVs in allowing credit of duty paid on the CCTVs falling under the CSH 85.28 of the Central Excise Tariff which was specifically excluded from the definition of the capital goods under rule 57-Q as it stood at the material period against the law settled by the Tribunal in several decisions cited above that even if any machinery is vital for the manufacture of final products, it is falls under the specifically excluded chapter heading, the assessee is precluded from availing modvat credit?

3) Whether the CESTAT is right in extending 100% credit on the goods received under the project import after 01.03.1997 as against 75% of credit allowable in terms of rule 57-Q (3) of the Central Excise Rules, 1944 applicable to the relevant period in the absence of proof of the receipt of the project import goods prior to 01.03.1997 from which date the credit taken on project import goods was restricted to 75% under 57Q (3) without discussing and recording the reasons, which is held as essential in the orders of the appellate authorities by the Apex Court, for accepting the date of declaration, that is, 23.3.1996 as the date of receipt despite the findings of the lower authorities and its own finding in the stay order to the contrary?"

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

Based on a show cause notice issued, the adjudicating authority, on adjudication, held that the assessee was not entitled to capital goods credit as the said goods were not used in the captive mines of the assessee. Against the said order, the assessee preferred appeal to the Commissioner (Appeals), who allowed the appeal in part by allowing credit for certain items and disallowing credit for certain items. Against the said disallowance, the assessee preferred appeal

to the Tribunal. The Tribunal, on consideration of the matter, held that the issues raised in the appeal is covered by the decisions of the Supreme Court and the Tribunal and, accordingly, allowed the appeal against which the present appeal is filed by the Department/appellant.

3. In spite of notice, which has been served on the respondent as early as on 18.4.2013, there is no representation on behalf of the respondent and the respondent is also not present in person in Court, in spite of its name being printed in the cause list. Therefore, this Court has decided to hear the learned counsel for the appellant and pass orders.

4. The main bone of contention of the learned standing counsel appearing for the appellant/Revenue is that though the Tribunal has held that the goods are capital goods and are used in the captive mines of the assessee, however there is no reason recorded to arrive at the said finding and, therefore, the order is liable to be set aside.

5. Heard the learned standing counsel appearing for the appellant/Revenue and perused the materials available in the typed set of documents as also the order passed by the Tribunal.

6. It is trite law that the fact finding authorities are to record reasons in support of their findings while disposing of the matters to enable the appellate forum to decide the issue. Recording of reasons is of paramount importance at the fact finding stage to arrive at a just decision.

7. In the present case, it is clear that the Tribunal is the final fact finding authority in the hierarchical chain. A perusal of the order under challenge would reveal that the facts, which are relevant for deciding the appeal, have not been discussed at all and as to how the decision of the Supreme Court and the Tribunal are applicable to the facts of the case. No reasons have been recorded by the Tribunal to arrive at the finding. This Court wishes to point out that the Tribunal could have been a little more explicit and clear while allowing the appeal by recording reasons, which are relevant to the case. It is not a case where the Department has conceded that the decisions of the Supreme Court or that of the Tribunal applies to the facts of the case. Such being the case, recording of reasons is of paramount necessity in all judicial and quasi-judicial orders. The order of the Tribunal, we find, is bereft of any reasoning. For better clarity, the order of the Tribunal is extracted hereinbelow :-

"5. We find that all the three issues are covered by the cited decisions of the Hon'ble Supreme Court and the Tribunal under which the credit denied in respect of the three different items have been

allowed. Following the ratio of the cited decisions, we set aside the impugned order in so far it relates to the above three categories of impugned goods and allow the appeal. The cross-objection stands disposed off."

8. From the above order it is evident that the facts in issue, as has been raised by the Department in this appeal, have not been considered by the Tribunal before coming to the conclusion by recording reasons. In such view of the matter, this Court is unable to take up the admitted questions of law, as there is no proper appreciation or discussion on facts and how the ratio of the decisions referred to in the order of the Tribunal will be applicable to the facts of the present case.

9. For the reasons aforesaid, this appeal is disposed of by setting aside the impugned order of the Tribunal and remanding the matter back to the Tribunal for passing a detailed and reasoned order. However, in the circumstances of the case there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Central Excise
& Service Tax
1, Williams Road, Cantonment
Tiruchirappalli.

2. The Customs, Excise & Service Tax
Appellate Tribunal
Shastri Bhavan Annexe - I
1st Floor, 26, Haddows Road
Chennai 600 006.

3. The Asst. Commissioner of Central Excise,
Central Excise Division II, Trichy.

Copy to The Section Officer,
V.R. Section, High Court, Madras.

1 cc to Mr. T. Chandrasekaran, Advocate, SR.No.226607

C.M.A. NO. 1535 OF 2010

rsk(co)
pmk.14.5.2015