IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 26.06.2015

CORAM :

THE HON'BLE MR.JUSTICE R. SUDHAKAR
AND
THE HON'BLE MS.JUSTICE K.B.K. VASUKI

C.M.A. No. 2343 of 2008

The Commissioner of Central Excise
Pondicherry Commissionarate
Goubert Avenue, Beach Road
Pondicherry - 605 001. ... Appellant

-Vs-

1. Customs, Excise and Service Tax Appellate Tribunal
South Regional Bench
Chennai.

2. M/s. Lotte India Corporation Ltd.
No: 84 Greams Road
Murugesan Complex, II Floor
Thousand Lights
Chennai - 600 006. ... Respondents

Appeal filed under Section 35-G of the Central Excise Act, 1944 against the order dated 07.12.2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai, made in Final Order No. 1460 of 2007.

For Appellant : Mr. A.P. Srinivas
For 2nd Respondent : Mr. G.RM. Palaniappan

J U D G M E N T
(Judgment of the Court wasdelivered by R. Sudhakar, J.)

Aggrieved by the order passed by the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This appeal was admitted by this Court, on 08.09.2008, on the following substantial questions of law :-

" 1. Whether the Tribunal is correct in holding that the process of combination of packing of a pouch containing butter scotch inside the pack of coffee bite amounts to manufacture and within the definition of Section 2 (f) (iii) of the Central Excise Act ?

2. Whether the Tribunal is correct in law in its finding that the butterscotch pouch inside the pack of coffee bite without any treatment amounts to manufacture ? and

3. Whether the Tribunal is correct in allowing the credit of duty paid on the butterscotch in as much as butterscotch was not an input used in or in relation to the manufacture of the final product, i.e., coffee bite in view of the definition of input in terms of Rule 2 (k) of CENVAT Credit Rules, 2004 ? "

2. The 2nd respondent / assessee is a manufacturer of Sugar Confectionery without Cocco falling under chapter sub heading No. 1704.90 and Sugar Confectionery with Cocco falling under chapter sub head No. 1804.00 of the CETA, 1985 respectively. The assessee purchased Sugar Confectionery namely Butter Scotch packaged in 30 gms pouch falling under chapter sub heading No. 1704.90 in bulk and availed Cenvat credit on the said goods. The assessee had put one 30 gms pouch containing Butter Scotch inside the pack of Coffee Bite weighing 500 gms. manufactured by the assessee with the indication that the 30 gms Butter scotch is given free along with the 500 gms. Of Coffee Bite and paid the duty on the MRP of Rs. 62.50 declared to the pack containing Coffee Bite and Butter Scotch. The assessee was issued with a show cause notice proposing for recovery of the Cenvat Credit of Rs. 1,03,167/- along with interest under 11 AB and imposition of penalty under Rule 15 of Cenvat Credit Rule, 2004. The said 30 gms. of butterscotch is not an input used in or in relation to the manufacture of final product viz. Coffee Bite.

3. After due process of law, the original authority, ordered for recovery of wrong credit of Rs. 1,03,167/- taken by the assessee, along with interest under Sec. 11 AB / rule 14 of Cenvat Credit Rules, 2004 and imposed a penalty of Rs. 10,000/- in terms of Rule 15 of Cenvat Credit Rules. 2004.

4. Aggrieved by the same, the assessee preferred an appeal before the Commissioner (Appeals), who rejected the appeal by his order dated 23.05.2007.

5. Against the said order, the respondent/assessee preferred appeal to the Tribunal. The Tribunal, on considering the facts of the case, allowed the appeal filed by the assessee, against which the appellant/Department has preferred the present appeal.

6. Learned counsel appearing for the 2nd 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 the appeal 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."

7. It is contended by the learned counsel for the 2nd 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 Commissioner (Appeals) is well within the limit of Rs.2 Lakhs, the present appeal, filed by the Department, is not maintainable.

8. Learned standing counsel appearing for the Department submitted that the appeal was admitted as early as on 08.09.2008 and the National Litigation Policy of the Government was 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 and, therefore, there was no bar on the appellant/Department in filing the appeal.

9. 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.

10. As submitted by the learned standing counsel for the Department, the National Litigation Policy was issued on 20.10.2010 while the appeal was admitted on 08.09.2008. Therefore, there was nothing wrong in the Department filing the appeal. However, it is to be pointed out that the main reason for bringing into effect the National Litigation Policy is to reduce Government litigation so that the Government ceases to be a compulsive litigant. The purpose underlying this Policy is to ensure that valuable time of the Courts is spent in resolving pending cases and in bringing down the average pendency time in the Courts and to achieve this, the Government should become an “efficient” and “responsible” litigant. With the above object in mind, the National Litigation Policy was formulated and issued. This Court is also conscious of the fact that the appeal has been filed well before the issuance of the National Litigation Policy. However, the said aspect does not preclude the Court from giving retrospective effect to the Policy, in certain circumstances, keeping in mind the laudable object behind its issuance. This Court is also conscious of the necessity to bring down the average pendency time in the Courts so that precious judicial time does not get wasted. With the above aspect in mind, this Court proceeds to analyse the present case on hand.

11. Even though the appeal has been admitted way back on 08.09.2008, a cursory look at the duty demand would reveal that the demand is approximately Rs. 1 lakh. The reason for the llitigation policy being put into operation coupled with the fact that the duty demand is only to the tune of Rs. 1 lakh approximately would not stand in the way of this Court to bring this appeal within the ambit of the above policy inspite of the appeal having been admitted on 08.09.2008.

12. Therefore, even though this appeal is filed to consider the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the preliminary objection made 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.

13. It is seen from the records that the order-in-original came to be passed by the Commissioner of Central Excise, Cuddalore, vide order in C. No. IV/16/70/2005-UCD dated 23.12.2005, imposing recovery of wrongly taken credit of Rs. 1,03,167/- from the assessee in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A (1) of the Central Excise Act, 1944; it also imposed a penalty of Rs. 10,000/- on the assessee in terms of Rule 15 of the Cenvat Credit Rules, 2004 along with interest on the wrongly taken credit of Rs. 1,03,167/- from the assessee in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944. Therefore, it is very clear from the records that the monetary limit having been fixed at Rs.2 Lakhs, even as per the order of the Original authority, the interest and penalty being less than Rs.2 Lakhs, the appeal is not maintainable.

14. 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 this appeal. Accordingly, without going into the merits of the questions of law raised, in the light of the Board's circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to the costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

Customs, Excise and Service Tax
Appellate Tribunal
South Regional Bench
Chennai.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.31720

C.M.A. No. 2343 of 2008

RJ(CO)
CA(22/09/2015)