

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 02.07.2015

CORAM

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

C.M.A. NO. 3235 OF 2010

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

... Appellant/ Appellant

- Vs -

1. M/s.India Pistons Ltd.
Huzur Gardens, Sembiam
Chennai 600 011.
2. The Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe
1st Floor, No.26, Haddows Road
Chennai 600 006.

.. Respondents/ Respondents

Appeal filed under Section 35-G of the Central Excise Act against the order dated 07.05.10 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.524/2010 in Appeal No.E/465/09 dated 10.5.2010

C.M.A.No.3235 of 2010:- against the order dated 8.5.2009 passed by the Commissioner (Appeals) Chennai made in order in Appeal No.21/2009 (M-II) against the order dated 26.11.2007 passed by the Assistant Commissioner of Central Excise Chennai I Division, Chennai II, Commissionerate, Chennai made in order in original No.22/2007 against the order dated 13.9.2007 passed by the Commissioner of Central Excise I Division, Chennai- II Commissionerate Anna Salai, Nandanam , Chennai-35 made in show cause notice No.23/2007.

For Appellant : Mr. S.Xavier Felix

For Respondents: Mr. K.Magesh
R2 : Tribunal

JUDGMENT

(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in dismissing the appeal filed by it, the appellant/Revenue is before this Court by filing the present appeal. This Court, vide order dated 23.12.2010, while admitting the appeal, framed the following substantial questions of law for consideration :-

"1) Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the demand is barred by limitation notwithstanding the fact that the Commissioner (Appeals) has decided the matter on merits and not on the applicability of proviso to Section 11(A) of CEA, 1944?

2) Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the respondent had not contravened the provisions of Rule 3 and Rule 9 (3) of Cenvat Credit Rules despite the fact that the respondent had availed excess invoice credit than they were eligible to take?

3) Whether on the facts and circumstances of the case, the Tribunal is right in law in holding that the respondent is eligible to avail excess Cenvat Credit passed on by M/s.IOC despite the fact that they are not manufacturers or producers of final product as per the provisions of Rule 3 of Cenvat Credit Rules, 2004?

4) Whether on the facts and circumstances of the case, the Tribunal is right in law in permitting the respondent to avail illegal and ineligible excess cenvat credit passed on by Indian Oil Corporation Ltd., despite the fact that M/s.IOC had requested the respondent to take only appropriate credit eligible as per the returns filed by them?

5) Whether on the facts and circumstances of the case, the Tribunal is right in law in relying on the decision in the case of M/s.Bharath Roll Industry reported in 114 ELT Page 51 wherein it was clearly held that four ingredients have to be satisfied for availing Cenvat credit whereas only two have been satisfied by the respondents?"

2. The first respondent/assessee is engaged in the manufacture of parts of IC engines falling under Central Excise Tariff heading 8409.91 and 8409.99 of the Central Excise Tariff Act. The first respondent had availed cenvat credit on the strength of the invoices issued in respect of various inputs including Furnace Oil and Super Kerosene Oil and also in respect of capital goods. They availed cenvat credit for payment of duty on the finished goods cleared from their factory.

3. On verification, certain discrepancies were found by the department in the availment of cenvat credit by the assessee and, therefore, a show cause notice was issued on the assessee and after adjudication, demand was made for a sum of Rs.1,43,045/= being the excess ineligible cenvat credit availed by the assessee for the period from September, 2004 to September, 2005 along with interest and penalty. After adjudication, the demand of Rs.1,43,045/= was confirmed and interest under Section 11AB of the Central Excise Act was levied along with penalty of Rs.15,000/= under Rule 25 of the Central Excise Rules, 2002 and further penalty of Rs.1,43,045/= under Rule 15 (2) of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act.

4. Aggrieved against the said order, the assessee preferred appeal to the Commissioner (Appeals), who set aside the order of the adjudicating authority against which the Department moved the Tribunal by filing an appeal. The Tribunal, by a cryptic order, dismissed the appeal filed by the Department against which the present appeal has been preferred by the Department.

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

6. Even at the outset this Court is not inclined to go into the questions of law, as admitted above, at this point of time for the reason that the order of the Tribunal, on the face of it, is a non-speaking order which merely refers to an earlier proceedings, as has been conceded by the learned SDR. For better clarity, the said order is extracted hereinbelow :-

"Heard both sides. Shri T.H.Rao, learned SDR fairly states that a similar issue has been decided by the Tribunal in favour of the respondents vide Final Order No.475/2010 dated 26.4.2010 in Appeal No.E/362/2009. Accordingly, applying the ratio of the said decision, the Department's appeal is dismissed."

7. Though it is submitted by the learned counsel for the first respondent/assessee that the Department itself has conceded the matter before the Tribunal and, therefore, it is estopped from filing this appeal, this Court, however, is of the considered opinion that even in such a situation, the Tribunal should have given some brief facts of the case and also recorded its reasoning to support its order. The reasoning of the earlier order is not evident. As the order of the Tribunal, recorded above, is cryptic and bereft of any facts and reasoning, we do not want to go into the factual aspect of the case and the questions of law raised. In such view of the matter, this Court is of the considered view that the

matter has to be remanded back to the Tribunal for passing a reasoned order on consideration of the facts in issue.

8. Accordingly, without going into the questions of law raised in this appeal, the appeal stands disposed of by way of remand to the Tribunal to rehear and dispose of the matter on merits. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

GLN

To

1. The Commissioner of Central Excise
Chennai II Commissionerate
No.692, MHU Complex
Anna Salai, Nandanam
Chennai 600 035.

2. The Customs, Excise & Service
Tax Appellate Tribunal
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+1 cc to Mr.K.Magesh, Advocate, sr.33839(28/10/2015)

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C.M.A. NO. 3235 OF 2010

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