IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2015

CORAM

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

C.M.A. NO. 774 OF 2010

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

- Vs -

1. M/s.Viki Industries Ltd.
   Plot No.19, Sipcot Industrial Complex
   Gummidipoondi 601 201.

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

Appeal filed under Section 35-G of the Central Excise Act against the order dated 9.12.09 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1894/2009.

For Appellant : Mr. E.Vijay Anand

For Respondent : Mr. K.Jayachandran

JUDGMENT
(DELIVERED 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 Court, vide order dated 25.03.2010, while admitting the appeal, framed the following substantial question of law for consideration:-

> "In the facts and circumstances of the case, whether the first respondent can avail cenvat credit on the impugned goods 'Centre Column and Bottom Plates' as per definition which is neither 'inputs' nor 'capital goods'?"

2. The respondent/assessee is engaged in the manufacture of M.S.Ingots falling under Chapter Heading No.7206.90. On verification of documents by the Department, it was found that the assessee availed cenvat credit of Rs.37,967/- for 'Centre Column and Bottom Plates'. The Department was of the view that the above goods were used for pouring the molten materials from the induction furnace into moulds and, therefore, could not be construed as capital goods. Therefore, a show cause notice was issued demanding the wrongful availment of cenvat credit. After adjudication, the adjudicating authority passed the order confirming the demand of Rs.37,967/= along with interest and imposed penalty of Rs.5,000/=.

3. Aggrieved by the said adjudication order, the respondent filed appeal before the Commissioner (Appeals). The Commissioner (Appeals), vide order dated 27.08.2003, set aside the impugned order and allowed the appeal filed by the assessee.

4. Against the said order, the Department preferred appeal to the Tribunal. The Tribunal, on considering the facts of the case, held that the Commissioner (Appeals) having relied on the Tribunal's decision in D.S. Metals Pvt. Ltd. - Vs - CCE (2003 (160) ELT 973) and the Department being not able to establish that the said order has been stayed or reversed by a higher judicial forum, declined to interfere with the order of the Commissioner (Appeals) and, thereby confirmed the said order. Aggrieved against the said order, appellant/Department has preferred the present appeal.

5. Learned counsel appearing for the 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."

6. It is further contended by the learned counsel for the 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 adjudication order is well within the limit of Rs.2 Lakhs, the present appeal, filed by the Department, is not maintainable.

7. Learned standing counsel appearing for the Department submitted that the appeal was admitted on 25.3.2010 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.

8. 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.

9. 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 25.3.2010. 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.

10. The litigation policy of the Government itself is very clear that where the duty involved including fine and penalty is less than Rs.2 Lakhs, no appeal need be filed. Even though this appeal was admitted on the above question of law, referred to supra, on 25.3.2010, 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.

11. It is seen from the records that the adjudicating authority initially confirmed the demand of Rs.37,967/= along with interest and penalty of Rs.5,000/=. On appeal, the Commissioner (Appeals) set aside the same, which was confirmed by the Tribunal. Therefore, it is very clear from the records that the monetary limit having been fixed at Rs.2 Lakhs, even as per the adjudication order the demand being less than Rs.2 Lakhs, the appeal is not maintainable.

12. The abovesaid 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 question of law formulated and 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 costs.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Central Excise
   Large Taxpayer Unit
   1775, Jawaharlal Nehru Inner Ring Road
   Anna Nagar West Extn.
   Chennai 600 101.

2. Customs, Excise & Service
   Tax Appellate Tribunal
   South Zonal Bench
   Shastri Bhavan Annexe
   1st Floor, No.26, Haddows Road
   Chennai 600 006.

1 CC to Mr. E.Vijay Anand, Advocate SR.No. 30167

1 CC to Mr. K.Jayachandran, Advocate SR.No. 30105

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VSN (CO)
PSI (23.09.2015)