

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.2.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Civil Miscellaneous Appeal No.816 of 2010

and

MP.Nos.1 and 2 of 2010

M/s.Nilkamal Limited, rep.by its
Authorized Signatory
Mr.B.Muthusrinivasan
Kuddapakkam, Villianoor Road,
Pondicherry.

... Appellant/Appellant

Vs

1. The Customs, Excise & Service Tax
Appellate Tribunal, Chennai-6.

2. The Commissioner of Central Excise,
Pondicherry.

... Respondents/Respondents

APPEAL under Section 35G of the Central Excise Act, 1944
against the order dated 3.8.2009 in Final Order No.940 of 2009
on the file of the first respondent herein.

For Appellant : Ms.Cynduja Crishnan
for Mr.S.Muthu Venkataraman

For Respondent-2 : Mr.K.Mohanamurali

Judgment was delivered by V.RAMASUBRAMANIAN, J

This appeal is by the assessee under Section 35G of the
Central Excise Act, 1944 questioning an order passed by the
first respondent herein. The appeal was admitted on 2.7.2010 on
the following substantial questions of law :

"(i) Whether under the Central Excise Rules,
a manufacturer would be eligible to take
credit of duty paid on packing material
provided the value of such packing material
is or was included in the final product or in

other words inclusion of the value of the packing material in the final product is a relevant consideration to decide the validity of the claim to CENVAT/MODVAT credit on packing material ?

(ii) Whether the order of the Tribunal suffers from the vice of failing to examine relevant consideration in as much as after recording the petitioner's submission that the value of the packing material is/was included in the value of the furniture (final product) and thus eligible to take credit of the duty paid on such packing material has erred in deciding the issue without rendering any finding on the above submission and thus stands vitiated for failing to take into account relevant considerations?"

In addition to the above, the additional substantial questions of law were framed :

"(i) Whether it is incumbent upon the Tribunal to consider every fact/submission for and against the assessee and give its finding on each of such submission after considering the evidence pro and contra to each one of them, the failure of the Tribunal to deal with the contentions/submissions of the appellant would vitiate the proceedings ?

(ii) Whether the Tribunal erred in as much as it fails to examine the aspect of relevance of packing material for marketability, which is relevant factor while reversing the order of the First Appellate Authority and denying the petitioner's claim of credit on packing material, thus stands vitiated for failing to take into account relevant factor as held in Dhirajlal Giridaral [AIR 1955 SC 271] ?

(iii) Whether the order of the Tribunal in so far as it is contrary to decisions of Coordinate Bench and the Division Bench of the Bombay High Court suffers from the vice of judicial indiscipline ? and

(iv) Whether the Tribunal misdirected itself in invoking the extended period of limitation without rendering any finding as to the existence of fraud, collusion or wilful misstatement or suppression of facts with an intent to evade payment of duty and thus bad for want of jurisdiction?"

2. Heard Ms.Cynduja Crishnan, learned counsel for the appellant and Mr.N. Mohanamurali, learned Standing Counsel for the second respondent.

3. The appellant/assessee is a manufacturer of moulded plastic furniture and material handling crates falling under Chapter Sub-Heading 9401.00/9403.00 and 3923.90 of the Central Excise Tariff Act, 1985. The officers of the Head Quarters Anti Evasion Unit, Tiruchirapalli, carried out a surprise inspection of the Pondicherry Unit of the appellant on 18.4.2001 and found out that in the invoice cum delivery challans, the words 'Woven Sacks - Nos.' were typed against the column 'Special Note'. After enquiry, the officers found out that at request of the dealers, the packing materials namely HDPE Woven Sacks were also sent along with finished products in loose conditions to enable them to load more materials per truck thereby reducing the cost of freight per piece of the product.

4. However, not satisfied with the said explanation offered contemporaneously at the spot, the Additional Commissioner issued a show cause notice dated 5.12.2001 calling upon the appellant to show cause as to why an amount of duty to the extent of Rs.9,61,758/- should not be recovered under Proviso (i) to Section 11A(1) of the Central Excise Act, 1944 read with the erstwhile Rule 57I(4)/Rule 57AH(2) of the Central Excise rules, 194 as it stood at the relevant point of time for the period from July 1999 to March 2001.

5. The appellant submitted their reply to the show cause notice on 19.1.2002 pointing out that whenever finished products are sold to customers or dealers located within a short distance, the appellant sent the finished products along with the packing material, without actually packing the finished products with the packing material. The appellant claimed that this was done to load more number of finished products onto the truck thereby reducing the cost of freight.

6. However, rejecting the explanation of the appellant, the Commissioner passed an Order in Original dated 20.5.2002, demanding recovery of a sum of Rs.9,61,758/-, together with a penalty for an equivalent amount and interest at the appropriate rate.

7. The appeal filed by the appellant was allowed by the Commissioner (Appeals) by an order dated 28.10.2002. Therefore, the Revenue filed a second appeal before the first respondent - Tribunal in E/143/2003. The Tribunal allowed the appeal of the Revenue on the ground that if the packing material had not been used for the purpose of packing the finished products, the credit taken by the assessee for the duty paid on packing

materials had to be reversed. In the said view of the matter, the Tribunal allowed the appeal of the Revenue by a final order dated 3.8.2009. It is against the said order that the assessee is on appeal.

8. Unfortunately, the Tribunal has not taken into account the definition of the word 'input' appearing in Rule 2(g) of the CENVAT Credit Rules 2002. It reads as follows :

" 'Input' means all goods, except high speed diesel oil and motor spirit, commonly known as petrol, used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not, and includes lubricating oils, greases, cutting oils, coolants, accessories of the final products cleared along with the final product, goods used as paint, or as packing material, or as fuel, or for generation of electricity or steam used for manufacture of final products or for any other purpose, within the factory of production.

Explanation 1 : The high speed diesel oil or motor spirit, commonly known as petrol, shall not be treated as an input for any purpose whatsoever.

Explanation 2 : Inputs include goods used in the manufacture of capital goods which are further used in the factory of the manufacturer."

9. The definition of the word 'input' extracted above, is very wide. It includes all goods, which are used in or in relation to the manufacture of final products. It includes goods, which are used directly or indirectly. It includes goods irrespective of whether those goods are contained in the final product or not and it includes accessories of final products cleared along with the final product. We reproduced Rule 2(g) for the purpose and convenience, as the said Rule contains the same word as that of the corresponding provision in the MODVAT Credit Rules.

10. The object of granting CENVAT credit is to ensure a single incidence of tax of the final product. The very purpose of the value added tax system is only to ensure this and to avoid incidence of tax more than once. The Tribunal has found that there is a mention about the packing material in fine print in the invoices. But, merely because it was found in a small print, the Tribunal interfered with a finding of fact recorded by the Commissioner of Appeals.

11. There is no dispute about the fact that the final products were cleared along with the packing material in this case. The surprise inspection did not reveal that the packing materials were recalled and again made use of as sought to be

contended by Mr.N.Mohanamurali, learned Standing Counsel. An invention of this nature across the bar cannot improve the case of the Revenue.

12. Accordingly, the civil miscellaneous appeal is allowed. The order of the Tribunal is set aside. The questions of law are answered in favour of the assessee. No costs. Consequently, the above MPs are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

RS

To

1.The Customs,
Excise & Service Tax Appellate Tribunal,
Chennai-6.

2.The Commissioner of Central Excise,
Pondicherry.

+1cc to Mr.K.Magesh, Advocate, S.R.No.8004

CMA.No.816 of 2010
&
MP.Nos.1 and 2 of 2010

AK(CO)
CA(07/04/2016)

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