IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2015

CORAM

The Honourable Mr.JUSTICE R.SUDHAKAR
and
The Honourable Ms.JUSTICE K.B.K.VASUKI

Writ Petition No.17007 of 2008

M/s.Goyal Ispat Limited,
rep. by its Director: Vinod Kothari
No.24, Padalam Sugar Mills Road,
Pazhayanur, Madurantakam,
Kancheepuram District. ... Petitioner

Vs.

1. The Central Board of Excise and Customs,
Ministry of Finance, rep. by Under Secretary,
Department of Revenue, North Block,
New Delhi.

2. The Deputy Commissioner of Central Excise,
Villupuram Division,
No.9A, Solai Nagar, Sudhakar Nagarm,
Villupuram. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of declaration to declare the Circular/Instructions in F.No.137/10/2006 - CX.4 dated 17.03.2006 issued by the 1st respondent as illegal, bad in law and unsustainable.

For Petitioner : Mr.K.Jayachandran

For Respondents : Mr.A.P.Srinivas

O R D E R

(Order of the Court was made by R.SUDHAKAR,J.)

This Writ Petition is filed for a declaration to declare the Circular/Instructions in F.No.137/10/2006 - CX.4 dated 17.03.2006 issued by the 1st respondent as illegal, bad in law and unsustainable.

2. A show cause notice has been issued on 15.5.2008 alleging as follows:

> "During verification of the input service documents based on which input service credit was taken, it was noticed that the assessees had availed credit of Service Tax of Rs.2,04,000/- paid on Erection, Installation & Commissioning of Wind Mill setup by them at Dhanakarkulam Village, Tirunelveli District, Tamilnadu based on the Invoice No.9101505309 dated 15.02.2005 issued by M/s.Enercon, Daman in the month of December 2007. The Wind Mill setup by the assessees is not within the factory premises but at a place away from the factory of manufacturer. Moreover, the power generated at the above Wind Mill is supplied to TNEB and not used in the factory of production by the assessees."

3. The Cause of action for filing the present Writ Petition arose on account of the letter issued by the Superintendent of Central Excise dated 24.3.2008 before issuing show cause notice, wherein the Superintendent of Central Excise quoting Rule 2(l)(ii), had requested the petitioner to expunge the ineligible service tax credit taken. In response to the said letter, the Writ Petitioner apparently has submitted a reply on 12.05.2008. In view of the show cause notice issued, the Writ Petition has been filed challenging the circular dated 17.3.2006, wherein it was stated that CENVAT Credit could not be allowed by such manufacturer for erection and commissioning of wind mill located outside the factory.

4. It is stated by Mr.K.Jayachandran, learned counsel appearing for the petitioner that the circular will have a binding effect on the Adjudicating Authority. Therefore, he may not canvas the issue on merits. He further states that much water has flown thereafter and some decision of the Tribunal have answered the issue in favour of the assessee.

5. We do not want to dwell upon the issue as to whether the circular will be binding or not at this stage leaving it open to the petitioner to give a reply to the show cause notice within a period of thirty days from date of receipt of a copy of this order stating all his objections on merits as may be available and pursue the adjudication proceedings. We are not inclined to stall the adjudication proceedings pursuant to the show cause notice merely on a challenge to the circular in issue. All issues are left open to the Writ Petitioner. The Writ Petition is disposed of accordingly. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sl

To

1. The Under Secretary,
The Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue, North Block,
New Delhi.

2. The Deputy Commissioner of Central Excise,
Villupuram Division,
No.9A, Solai Nagar, Sudhakar Nagarm,
Villupuram.

+1cc to Mr.K.Jayachandran, Advocate, S.R.No.26953
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.27016

Writ Petition No.17007 of 2008

VD(CO)
CA(15/06/2015)