

***HON'BLE SRI JUSTICE G.CHANDRAIAH**
&
HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+C.E.A. No. 27 of 2004

%01-07-2015

#The Commissioner of Central ExciseAppellant

Vs.

\$ M/s. Hetero Drugs (P) Ltd. and two others Respondents

!Counsel for the Petitioner: Ms. P. Sarada, learned S.C. for Customs
and
Central Excise

Counsel for the Respondents: Sri Tejprakash Toshniwal

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>Head Note:

? Cases referred:

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JUDGMENT:- (per Hon'ble Sri Justice Challa Kodanda Ram)

The Central Excise Appeal is filed at the instance of the Department against the Final Order No. 252 to 254 of 2004, dated 30.01.2004 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangalore (for short "CESTAT") raising the following substantial question of law for adjudication:

"Whether the Hon'ble CESTAT, Bangalore was correct in allowing the appellant to take modvat credit on forged/fabricated documents / Bills of Entries under Rules 57-A and 57-G of Central Excise Rules, 1944?"

The brief facts of the case are that the 1st respondent-company is a manufacturer of drugs and for the purpose of manufacture it has imported certain raw materials by engaging Customs House Agent (CHA) at Chennai. The Customs House Agent was alleged to have utilized the demand drafts issued by different parties for discharge of customs duty liability to an unrelated party's account and thereby cleared the goods fraudulently from the customs-bounded warehouse. The appellant passed an adjudication Order-in- Original No.09 of 2001, dated 14.08.2001 against the respondents with the allegation of clearing goods without payment of duty and levied the duty and penalty. The respondents filed an appeal before

the CESTAT, which, on verification of the records, passed the impugned Final Order giving a finding that no role was played by the 1st respondent-Company or any of its officers in clearing the goods and thus set aside the Order-in-Original. Being aggrieved by the Final Order, dated 30.01.2004, the Department has preferred the present appeal.

Heard Ms. P.Sarada, learned Standing Counsel for Customs and Central Excise appearing on behalf of the appellant and Sri Tejprakash Toshniwal, learned counsel for the 1st respondent-assessee.

The learned Standing Counsel, while drawing our attention to the Order-in-Original particularly paragraph No.6(iii), submits that as a matter of fact, the officials found that the amounts made available by the respondents were deposited in the account of CHA thereby those amounts were utilized by CHA for payment of the customs duty of others, and in the process, so far as the respondents are concerned, there is no discharge of the tax liability. In that view of the matter, the judgment dated 09.04.2014 rendered by this Court in C.E.A.No. 54 of 2005 is distinguishable on facts.

On the other hand, the learned counsel for the 1st respondent submits that this case is squarely covered by the judgment dated 09.04.2014 in C.E.A.No. 54 of 2005. He has also drawn our attention to the explanation submitted by the respondents wherein it has been

specifically stated that the demand drafts drawn in favour of the Collector, Customs, Chennai were further drawn on account M/s.Hetero Drugs Limited. This aspect of the matter is not specifically denied in the order-in-original itself and at any rate the last fact finding authority i.e. the Tribunal had categorically found that the respondents had, in fact, discharged the duty liability. The learned counsel also points out that the Tribunal had also allowed the appeal on the ground that it is barred by limitation.

Having considered the rival submissions and having perused the record, it is noticed that the judgment dated 09.04.2014 in C.E.A. No.54 of 2005 arose from the Final Order No.1753 of 2004, dated 05.11.2004, wherein, as a matter of fact, the order of the Tribunal, dated 06.02.2004, which is the subject matter of the present appeal, was followed. In other words, the Final Order No. 1753 of 2004, dated 05.11.2004 was based on the order dated 06.02.2004 which is the subject matter of the present appeal. From the judgment delivered in C.E.A.No. 54 of 2005, it is found that the facts of the case on hand were taken into consideration and we do not find any distinction. In the absence of a specific question raised with respect to any perversity of fact and based on the submissions made by the learned Standing Counsel for the Department, the impugned Final Order cannot be interfered with. We also notice that the Tribunal allowed the appeal of the respondents both on facts and on the

ground of limitation. In the present appeal, there is no challenge with respect to the aspect of limitation.

From the above analysis, the appeal is devoid of merits and dismissed. No order as to costs.

As a sequel to the dismissal of the appeal, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

G. CHANDRAIAH, J

01.07.2015

CHALLA KODANDA

RAM,J

Note: L.R. Copy to be marked

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