sHON’BLE SRI JUSTICE DILIP B. BHOSALE
AND
HON’BLE SRI JUSTICE A. RAMALINGESWARA RAO

CEA Nos. 11, 31, 33, 35, 40, 84, 85, 90 OF 2006; 53 O f 2007; 136 OF 2010 AND 196 OF 2011

COMMON JUDGMENT: (per the Hon'ble Sri Justice Dilip B. Bhosale)

These central excise appeals arise from the orders passed on different dates by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench at Bangalore (for short, ‘CESTAT’). The appeals filed by the respondents herein against the orders in original passed by the Commissioner of Customs and Central Excise were allowed by the CESTAT based on its judgment dated 04-08-2004 in ***Escort Limited vs. Commissioner of Central Excise, Faridabad***[1] and the order dated 10-11-2000 rendered in ***Malviya Chem. & Pharmaceuticals (P) Ltd. Vs. Commr. Of C.Ex., Meerut***[2]. The question that was considered was whether the respondents can avail modvat credit when they have already paid 8% of the price in terms of Rule 57 CC (1) of the Central Excise Rules, 1944 on the exempted final product. In the present appeals, the substantial questions of law framed are common.

This Court is informed that the judgment of the Tribunal in ***Escort Limited*** case (supra) was carried to the High Court of Punjab and Haryana by the Department bearing CEA No.106 of 2006. The High Court of Punjab and Haryana framed the following question of law for its determination:

> “Whether credit of duty is admissible to the inputs in the present case in terms of erstwhile Rule 57C & 57CC, used in exempted goods when the inputs (IC engine below 1800 cc) are not common with those used in the dutiable products, when an amount of 8% of the price of exempted product has been paid and when no separate account has been maintained in respect of the exempted goods?”

The question was ultimately answered in favour of the assessee. In other words, the High Court of Punjab and Haryana confirmed the order passed by the CESTAT.

Learned counsel for the appellant does not dispute and fairly states that the substantial questions of law raised and involved in these appeals are squarely covered by the judgment of the High Court of Punjab and Haryana in ***Escort Limited*** case (supra). She did not make any attempt to either distinguish the judgment of the High Court of Punjab and Haryana or to persuade us to take a view other than the one taken by that High Court. She only submits that the judgment of the High Court of Punjab and Haryana is carried by the Department to the Supreme Court in SLP No.556 of 2011 and the matter is now pending there for adjudication.

In this view of the matter, we deem it appropriate to dispose of these appeals by the following order, to which learned counsel for the parties consented for:

"The appeals are disposed of with liberty to the appellant to seek revival of the appeals in the event their challenge to the judgment of the High Court of Punjab and Haryana in ***Escort Limited*** case (supra) is upheld by the Supreme Court. It is needless to mention that the appellant shall seek revival of their appeals within reasonable time from the date of the order of the Supreme Court in SLP No.556 of 2011 or in the appeal, and if such revival is sought, it would be open to the parties to argue these appeals afresh on merits. In that event, it would be open for the parties to raise all contentions as available in law."

Miscellaneous petitions, if any, also stand disposed of. There shall be no order as to costs.

DILIP B. BHOSALE, J

A. RAMALINGESWARA RAO, J

17-03-2015
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[1] 2004 (176) ELT 817

[2] 2001 (127) ELT 274