THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

C.E.A.NO.92 OF 2015

O R D E R (Per GC,J)

This is a departmental appeal filed against the Final Order No.22015/2014 dated 17.11.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bangaluru.

2. The respondent is the manufacturer of bulk drugs and it has procured ethanol from M/s Andhra Sugars Limited and paid the excise duty and availed the CENVAT credit. On the ground that the payment of duty by M/s Andhra Sugars Ltd., was wrong and therefore, the respondent is not eligible for credit, demand for an amount of Rs.22,95,080/- was raised during the period from April, 2007 to March, 2009 by the Additional Commissioner of Central Excise. Challenging the same, the respondent preferred appeal along with the stay petition. As the condition of pre-deposit was not complied with, the appeal was dismissed. Aggrieved by the dismissal, the respondent preferred appeal and the Tribunal by the impugned order, while relying on the decision of the High Court of Madras reported in ***C.C.E. CHENNAI v. CEGAT, CHENNAI***[1] and in the respondent's own case for a different period in Tribunal's Final Order No.25778/2013 dated 5.8.2013, held that the CENVAT credit availed by the respondent is admissible and accordingly allowed the appeal. Assailing the order of the Tribunal, the Department has filed the present appeal raising the following questions of law:

1. Whether the respondent is correct under law in availing CENVAT credit for the amount paid purporting to be central excise duty in procuring 'ethanol' as classified under Chapter 29 of the First Schedule to Central Excise Tariff Act, 1985 from M/s The Andhra Sugars Ltd (TASL)?

2. Whether the respondent is correct in claiming that the product 'ethanol' is an excisable commodity and classifiable under chapter 29 of the Central Excise Tariff.

3. Whether the CESTAT, Bangalore is correct in allowing the appeal filed by the respondent relying on the judgment of the High Court of Madras reported in C.C.E. CHENNAI V. CEGAT (1 supra), which is passed in the context of erstwhile Rule 57A(1) of the Central Excise Rules, 1944 and in the appellant's own case for a different period passed by the Tribunal by Order No.25778/2013 dated 5.8.2013?

3. The learned Standing Counsel for the appellant as well as the respondent submitted that the issue involved in the present case is squarely covered by a judgment of this court in the respondent's case own case for different period in THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE HYDERABD vs. M/S MYLAN LABORATORES LTD.,[2] wherein the Division Bench of this court relying the decision of the Madras High Court (1 supra), allowed the claim of the respondent in availing CENVAT credit.

4. In view of the above submission and the Division Bench judgment of this court (2 supra), the appeal is dismissed at the stage of admission, answering the issues raised by the appellant – department in favour of the respondent – manufacturer. No costs.

5. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

CHALLA KODANDA RAMJ,J

DATE:07.10.2015

AVS

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[1] 2006(202)E.L.T 753 (Mad.)

[2] CEA.No.55/2014 dated 3.6.2014