IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 55 of 2014
Date of Decision:- 10.04.2015

M/s. Rawalwasia Ispat Udyog Pvt. Ltd. ......Appellant(s)

vs.

The Customs, Excise & Service Tax Appellate Tribunal and another

......Respondent(s)

CORAM:- HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Naveen Mullick, Advocate,
for Mr. Parth Mullick, Advocate,
for the appellant.

Mr. D.D. Sharma, Advocate,
for respondent no. 2.

S.J. VAZIFDAR, A.C.J. (Oral)

This is an appeal against the orders of the CESTAT dated 15.02.2013 and an order dated 21.02.2014. The following questions of law have been raised in the appeal:-

"i) Whether the Zinc-Dross/Zinc-Ash generated in the Factory has even been held to be not covered under Section – 2(f) of Central Excise Act, 1944 by the Apex Court, whether a bare Provisions of Section – 2(d) of the Central Excise Act, 1944 is enough to raise & confirm the Demand of Duty on such products?

ii) Whether the Explanation attached with effect from 10.05.2008 by Section – 78 of the Finacne

Act, 2008 to Section – 2(d) of the Central Excise Act, 1944 for Levying & Collection of Duty can be applied to the Goods not satisfying the conditions of Section – 2 (f) of the Central Excise Act, 1944?

iii) Whether the Hon'ble Tribunal, without there being any Notice for Final-Disposal, could pass the Final-Order on the date only fixed for disposing of the Stay – Application and whether the Final Order passed is in violation of the principles of natural justice?

iv) Whether the Demand of Duty on Zinc-Dross/Zinc-Ash confirmed by the Hon'ble Tribunal is Legal, Correct and Proper?

For the purpose of this appeal, we, however, raise the following substantial question of law:-

"Whether the appellant is bound by the concession recorded in the impugned order dated 15.02.2013 assuming that the concession was made."

The main issue before the Tribunal was whether zinc dross is covered under Section 2(f) of the Central Excise Act, 1944 and amenable to excise duty. The appellant had deposited the entire amount as assessed. Being aggrieved by the order of the Assessing Authority and the First Appellate Court, the appellant filed the appeal before the Tribunal. The appellant contended that in view of its having deposited the entire demand, it was entitled to a stay. The matter appeared on the Board on the first day itself for considering the application for stay regarding penalty. It was not necessary to consider any application for stay regarding the demand as the amount demanded had already been deposited. However, the CESTAT, by the impugned order dated 15.02.2013, disposed of the appeal itself. The

CESTAT could not have disposed of the appeal without the consent of the appellant. The order, however, suggests that the counsel had consented to the matter being disposed of.

The appellant, however, filed an application for recalling the order stating that the concessions recorded by the CESTAT are incorrect. The appellant relied upon the affidavit of the counsel who stated that no concession was made by him. The order records that the counsel only contended that there was no suppression on the appellant's part and that as such the penalty should not have been imposed and left the matter to the discretion of the CESTAT. The CESTAT accordingly confirmed the duty and interest but set aside the order as regards penalty.

We do not wish to state that concession was not made. The dismissal of the application for rectification of the order, we would presume was justified.

It is clear, however, that the matter had not been argued on merits. Indeed, if the concession was made, the CESTAT cannot be blamed for not having considered the same on merits. We intend setting aside the orders and remanding the matter to grant the appellant the opportunity of meeting the case on merits.

We do not, however, do so disbelieving what is recorded in the orders of the CESTAT dated 15.02.2013 and 21.02.2014. Assuming that the concession was made, it was made on a question of law which the party ought not to be bound by. Further there does not appear to be anything on record to indicate that the appellant had instructed the counsel to make the concession of law.

The question of law, therefore, is answered in favour of the appellant. The impugned orders are set aside. The appeal is restored to the file of the Tribunal, who shall decide the matter afresh. It is, however, clarified that only the question of law may be argued by the appellant and no further material shall be produced by the appellant. It is further clarified that as the entire order has been set aside, it would be open to the respondents to insist upon the penalty as well. In other words, the issue even regarding penalty is kept open. The application for stay be also decided afresh as it had not been decided in view of the main appeal itself having been disposed of. It is, however, open to the Tribunal to either decide the application for stay first or to dispose of the appeal as well.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

10.04.2015
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