IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No. 99 of 2014 (O & M)
Date of Decision:- 24.07.2015

Commissioner of Central Excise, Jalandhar ......Petitioner(s)

vs.

M/s. G.M.P. Finishing Mills ......Respondent(s)

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

HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. Sunish Bindlish, Advocate, for the appellant.

Mr. V.K. Sandhir, Advocate, for the respondent.

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

This is an appeal against the order of the CESTAT dismissing the appellant's appeal against the order of the Commissioner (Appeals). The appeal is admitted on the following substantial question of law:-

> *"i) Whether the provisions of Section 38A of the Central Excise Act, 1944 inserted by Section 131 of the Finance Act, 2001 (validation of action taken has been provided for by virtue of Section 132 of the Finance Act, 2001) shall be applicable in respect of obligation & liabilities incurred under Rules 9620, 96ZP & 96ZQ of erstwhile Central Excise Rules 1944 before the same were omitted, notwithstanding the omission of Section 3A w.e.f. 11.05.2001?*

The period of dispute is from 13.01.1999 to 28.02.1999. The proceedings under Section 3A of the Central Excise Act, 1944 read with Rule 96ZQ of the Central Excise Rules, 1944 were initiated by the issuance of a show cause notice dated 13.07.1999. The adjudication order was passed on 22.09.2004. The first appellate authority allowed the assessee's/respondent's appeal by an order dated 07.07.2005. The order of the Tribunal impugned in this appeal was passed on 23.04.2014.

The Tribunal dismissed the appeal on the ground that Rule 96ZQ and Section 3A have been omitted on 31.03.2001 and 11.05.2001 and for arriving at this conclusion, theTribunal relied upon the judgment of the Gujarat High Court in the case of ***Krishna Processors vs. Union of India, 2012 (280) ELT 186.*** However, there are several Division Bench judgments of this Court which have taken a contrary view. The first judgment was in the case of ***Shree Bhagwati Steel Rolling Mills vs. Commissioner of Central Excise, Chandigarh, 2007 (207) ELT 58.*** The Division Bench held that the pending proceedings are saved in view of Section 38A. We are bound by this judgment.

In the circumstances, the question of law is answered in favour of the appellant. The appeal is allowed. The matter, however, shall be remanded to the Tribunal for a decision on merits.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

24.07.2015
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