IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2016

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.NO.2358 OF 2016

Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu,
Salem 636 001. .. Appellant/Appellant

Vs

M/s. Sakthi Sugars Limited,
Poondurai Semur Village,
Aval Poondurai Via,
Erode 638 115. .. Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 35G of Central Excise Act, 1944 against the Final Order No.40702 of 2015 dated 24.6.2015 made in E/542/2010-SLM passed by the Customs, Excise and Service Tax Appellate Tribunal South Zonal Bench, Chennai.

For Appellant : Mr. V. Sundareswaran
Ms. Cynduja Crishnan
For Respondent : Mr. Muthu Venkataraman

J U D G M E N T

(Order of the Court was pronounced by Dr.Anita Sumanth, J.)

This matter is taken up for final hearing at the stage of admission itself and disposed of after hearing the parties.

2. Heard Mr. Sundareswaran, learned counsel appearing for the Revenue and Mr.S.Muthuvenkataraman appearing for the assessee/respondent.

3. Pursuant to a show cause notice, an order in Original dated 4.12.2009 was passed reversing CENVAT Credit on the ground that the same was wrongly availed under Rule 14 of CENVAT Credit Rules 2004 r/w.Section 11(A)(2) of Central Excise Act, 1994 along with interest and penalty. The matter travelled in appeal

to the Commissioner (Appeals), who, after detailed verification, upheld the entitlement of the assessee to CENVAT Credit. Consequently, the imposition of interest and penalty were cancelled.

4. An appeal was filed assailing the aforesaid order before the Customs, Excise and Service Tax Appellate Tribunal, Chennai. The grounds filed by the Revenue before the Tribunal indicate clearly that what was agitated in appeal was restricted to the cancellation of penalty and the Department has, in ground 5, specifically admitted the position that there was no dispute as far as the merits of the case was concerned. It is thus clear that the Department has accepted the order of the Commissioner (Appeals) with respect to the eligibility to avail CENVAT credit. While this is so, the present appeal filed before us seeks to re-agitate the merits of the matter which is impermissible. The appeal is thus misconceived and liable to be rejected in limine.

5. We would note incidentally that the order of the CESTAT dated 24.6.2015 is rather cryptic and non-speaking. Having said so, for the reasons set out above, the departmental appeal is dismissed without costs. Consequently, the connected C.M.P.No.12869 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msr

To,

1. The Customs, Excise & Service Tax Appellate Tribunal,
   South Zonal Bench, Chennai.

2. The Commissioner of Central Excise,
   No.1, Foulks Compound,
   Anai Medu,
   Salem 636001.

+1cc to Mr.Muthu Venkataraman, Advocate, S.R.No.73813
+1cc to Mr.Sundaraswaran, Advocate, S.R.No.73620

CA(CO)
RS(18/01/2017)

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