

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.1.2016

Coram

The Honourable Mr.Justice M.JAICHANDREN
and
The Honourable Mrs.Justice S.VIMALA

C.M.A.Nos.35 and 36 of 2016

M/s.Oerlikon Friction Systems (India) Ltd.,
(formerly M/s.Sulzer Friction Systems (India) Ltd.,
Shed No.50, SIDCO Industrial Estate,
Thirumazhisai
Chennai - 600 124 ... Appellant

-vs-

1. The Customs Excise and Service Tax
Appellate Tribunal
South Zonal Bench
No.26, Shasthri Bhavan Annexe Building
Haddows Road
Chennai - 600 006
2. The Commissioner of Central Excise
Chennai IV Commissionerate
No.692, MHU Complex
Nandanam, Chennai - 600 035 ... Respondents

CMA No.35 of 2016 had been filed to set aside the Miscellaneous Order No.40940 of 2015 dated 24.6.2015 passed by the first respondent Tribunal, so far as it related to the rejection of the EH application is concerned, and direct the first respondent Tribunal to take up the appeals filed by the appellant early by providing out of turn hearing and dispose of the same on merits.

CMA No.36 of 2016 had been filed to set aside the Miscellaneous Order No.40941 of 2015 dated 24.6.2015 passed by the first respondent Tribunal, so far as it related to the rejection of the EH application is concerned and direct the first respondent Tribunal to take up the appeals filed by the appellant early by providing out of turn hearing and dispose of the same on merits.

For appellant : Mr.K.Jayachandran

For respondent : Mr.K.Mohanamurali

C O M M O N J U D G M E N T

(The Judgment of the Court was made by
M.JAICHANDREN,J.)

The Civil Miscellaneous Appeal No.35 of 2016, has been filed against the Miscellaneous Order No.40940/2015, dated 24.6.2015, passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai insofar as it relates to the rejection of the early hearing application.

2. The Civil Miscellaneous Appeal No.36 of 2016, has been filed against the Miscellaneous Order No.40941/2015, dated 24.6.2015, passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai, insofar as it relates to the rejection of the early hearing application.

3. It has been stated that the appellant is engaged in job work for the manufacturers of automobile components. The appellant had filed an appeal before the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, against the Order in Original Nos.11 & 12 of 2014, dated 28.5.2014, passed by the Commissioner of Central Excise, Chennai, confirming the demand of differential duties of central excise said to be payable by the appellant, along with the interest, on the ground that the appellant was required to discharge the central excise, on the cost on the inputs supplied free of cost by the principal manufacturers, under the job work provisions as per Notification No.214/86 CE and Rule 4(5)(a) of Cenvat Credit Rules, 2004. The appellant had also been imposed with penalties, under Section 11AC of the Central Excise Act, 1944, and under Rule 27 of the Central Excise Rules, 2002. Along with the said appeal, the appellant had filed an application for waiver of pre-deposit and for the stay of the recovery of the amount said to be payable by the appellant, during the pendency of the appeal. Early hearing petitions had also been filed by the appellant. The Tribunal had granted orders granting waiver of pre-deposit and stay of recovery of the amount said to be due from the appellant during the pendency of the appeal. However, it had dismissed the applications for the early hearing of the appeals stating that they had no merits.

4. In such circumstances, the appellant had filed the present Civil Miscellaneous Appeals before this Court raising the following substantial questions of law.

"A. Whether the Tribunal is justified in rejecting the applications for early hearing filed by the appellant, without any reasons, when the applications have been filed satisfying the situations stated in their own instructions in CESTAT F.No.974/PR (CEGAT)/86, dated 21.2.1986 for grant of early hearing?

B. Whether the Tribunal is right in rejecting the early hearing applications without assigning any reasons when it is a statutory application filed under Section 35B(7) of the Central Excise Act?"

5. The learned counsel appearing for the appellants had submitted that the Customs Excise and Service Tax Appellate Tribunal, Chennai, had passed a cryptic and non-speaking order, while dismissing the early hearing applications. He had further submitted that the Tribunal had failed to follow Rule 28C of the Central Excise and Sales Tax Appellate Tribunal (Procedure) Rules, 1982. As such, the Tribunal ought to have passed a detailed order giving reasons, while dismissing the said applications.

6. The learned counsel appearing for the appellants had further submitted that the Tribunal had failed to take into consideration the instructions contained in CESTAT F.No.974/PR (CEGAT)/86, dated 21.2.1986, wherein, the circumstances under which early hearing applications could be filed by the assessee or the Department had been enumerated. Since the appellant had satisfied the conditions contained in the said instructions, the applications filed by the appellant for the early hearing of the appeals ought to have been allowed.

7. On hearing the submissions made by the learned counsels appearing for the parties concerned and on a perusal of the records available, we are not convinced that substantial questions of law had arisen for the decision of this Court in the present Civil Miscellaneous Appeals. The instructions contained in CESTAT F.No.974/PR (CEGAT)/86, dated 21.2.1986, cannot be said to be having the force of law creating certain rights, based on which the appellant could be permitted to claim that it had been aggrieved by the common order passed by the

Tribunal dismissing the early hearing applications filed by the appellant. Even though the order passed by the Tribunal dismissing the applications filed by the appellant, for the early hearing of the appeals, is cryptic in nature, it cannot be said that the appellants could be really aggrieved by the said order. In such circumstances, we find that there is no merit in the present appeals filed by the appellants. Hence, the appeals stand dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

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C.M.A.Nos.35 and 36 of 2016

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cnr(CO)
srg(10/03/2016)