IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-01-2016

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN
AND
THE HONOURABLE MRS.JUSTICE S.VIMALA

C.M.A. No.67 of 2016 and
C.M.P.No.573 of 2016

M/s.Vishnu Paper Products Pvt. Ltd.,
No.208, Semangalam,
Vanur Taluk, Villupuram-605 109. .. Appellant/Respondent

Versus

1. Customs, Excise and Service Tax Appellate Tribunal
1st Floor, Shastri Bhavan Annexe, Haddows Road,
Nungambakkam, Chennai-600 066.

2. The Commissioner of Central Excise,
No.1, Goubert Avenue, Beach Road,
Puducherry-605 001.

3. The Joint Commissioner of Central Excise,
No.1, Goubert Avenue, Beach Road,
Puducherry-605 001. .. Respondents/Appellant

Prayer: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, seeking to set aside the Final Order No.40329/2015, dated 19.03.2015 passed by the first respondent.

For Appellant : Mr.S.Jaikumar

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
(Central Standing Counsel)

O R D E R

The Civil Miscellaneous Appeal has been filed against the Final Order No.40329/2015, dated 19.3.2015, passed by the first respondent.

2. The brief facts of the case are as follows:

2.1) The adjudicating authority had confirmed the demand of Rs.16,82,086/- as ineligible CENVAT credit, with interest and imposed a penalty equal to the demand, under Rule 13 of Cenvat Credit Rules, 2002, read with Section 11AC of the Central Excise Act. He had also imposed a penalty of Rs.1 lakh, under Rule 13 of Cenvat Credit Rules, 2002.

2.2) On appeal by the assessee, the lower appellate authority had upheld the order of the adjudicating authority to the extent of Rs.1,97,241/-, availed as Cenvat Credit on the capital goods and the penalty of Rs.98,620/-, in respect of the simultaneous availment of Cenvat Credit and depreciation from Income Tax, on the ground that the assessee had produced revised Income Tax returns for the years 2000-2001 and 2001-2002 and the original return for 2002-2003. The revenue had filed an appeal against that portion of the order passed by the Commissioner (Appeals) remanding the case to the lower appellate authority on the simultaneous availment of Cenvat Credit and depreciation.

2.3) The Tribunal had stated in its impugned order, holding that the issues arising in the appeal were relating to the simultaneous availment of Modvat Credit, as well as the claim of depreciation, under the Income Tax Act, 1961. The lower appellate authority had remanded the said aspect to the adjudicating authority, for denova adjudication. The revenue had pleaded that there was no necessity for the remanding of the matter to the lower appellate authority only on the ground that the respondent had filed revised returns for years 2000-2001, 2001-2002 and 2002-2003.

2.4) The Tribunal had held that it is evident that the appellate authority had remanded the matter to the original authority only on the ground that the respondents had filed revised returns, without any discussion. Citing the decision of the Karnataka High Court, made in Suprajit Engineering Ltd., the Tribunal had held that, when an assessee had claimed depreciation and had also availed Modvat Credit, it would not be eligible to avail credit. Accordingly, it had been held that the order of the Commissioner (Appeals), had been set aside to the extent that the matter had been remanded to the adjudicating authority on the issue of simultaneous availment of Cenvat Credit, as well as the claim of depreciation relating to the demand of Rs.14,84,845/- and the Order-in-Original had been restored. Challenging the said order of the Tribunal, the assessee had filed the present appeal, before this court raising various grounds.

3. At this stage of the hearing of the appeal, the learned counsel appearing on behalf of the appellant had submitted that it would suffice if the impugned order of the Tribunal is set aside, as it had been passed exparte, without an opportunity of hearing having been given to the assessee, the appellant herein and if the matter is remitted back to the Tribunal for deciding the issues raised before it, after giving an opportunity of hearing to the appellant, as well as the respondent department.

4. In view of the submissions made by the learned counsel appearing on behalf of the appellant and on a perusal of the records available, we find that the Tribunal had decided the matter, exparte, considering the issues raised before it. Even though the order of the Tribunal had been passed, on merits, we are of the considered view that a reasonable opportunity ought to have been given to the appellant assessee to put forth its contentions before the Tribunal. As such, we find it appropriate to set aside the impugned order, dated 19.3.2015, passed by the Tribunal and to remit the matter back to the Tribunal for passing appropriate order, on merits and in accordance with law, as expeditiously as possible, after permitting the appellant assessee as well as the respondent department to raise all the grounds available to them. Accordingly, the appeal is ordered. Consequently connected civil miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

csh

To

1. Customs, Excise and Service Tax Appellate Tribunal
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3. The Joint Commissioner of Central Excise,
No.1, Goubert Avenue, Beach Road,
Puducherry-605 001.

4. The Section Officer,
VR Section, High court, Madras.

+1 cc to Mr.A.P.Srinivas, Advocate, sr.6026
+1 cc to S.Jaikumar, Advocate, sr.5929

us co
kra 16.02.2016