IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.3.2016

CORAM :

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Civil Miscellaneous Appeal Nos.3649 and 3650 of 2010

The Commissioner of Central Excise,
Puducherry Commissionerate,
Puducherry-1. ... Appellant in both Appeals/Respondent

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai-6.

2. M/s.Larsen & Toubro Ltd. (ECC Division), TLT Works, Puducherry-101. ... Respondents in both Appeals/ Applicant

APPEALS under Section 35G of the Central Excise Act, 1944 against the common order dated 6.5.2010 made respectively in Final Order Nos.519 and 520 of 2010 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Regional Bench, Chennai.

For Appellant : Mr.V.Sundareswaran, SPC

For Respondent-2 : Mr.N.Viswanathan

COMMON JUDGMENT
(JUDGMENT WAS DELIVERED BY V.RAMASUBRAMANIAN,J)

These appeals are filed by the Revenue under Section 35G of the Central Excise Act, 1944 and were admitted on 28.1.2011 on the following two substantial questions of law :

> "(i) Whether the Tribunal is justified in holding that no interest can be demanded for the differential duty not paid in time merely because the assessee had sufficient

credit in their current account during that period ? and

(ii) Whether the Tribunal is justified in holding that interest not payable in the above circumstances especially in the light of the law laid down by the Hon'ble Supreme Court in the case of M/s.SKF Ltd. reported in 2009 (239) ELT 385 (SC)?"

2. We have heard Mr.V.Sundareswaran, learned Senior Panel Counsel for the appellant and Mr.N.Viswanathan, learned counsel appearing for the second respondent.

3. The facts, out of which, the above appeals arise, can be briefly stated as follows :

(a) The second respondent has two units, one of which is a transmission tower line unit and the other is a re-rolling mill situated in the same compound holding different central excise manufacturing registrations.

(b) It is claimed that the metal section parts manufactured by re-rolling mill were transferred to the tower line unit on payment of duty and used in the manufacture of transmission tower lines. The tower line unit cleared the transmission tower lines on payment of duty.

(c) The tower line unit availed input CENVAT credit of the duty paid on the metal section parts received from the re-rolling mill.

(d) During the external audit held in 2006, an objection was raised that the valuation, as done on the market price for metals, was not correct and that it had to be done on CAS 4 basis. The value so determined led to the short payment of duty, of lesser amount. But at the same time, there had been huge excess amount during the very same period.

(e) On 1.4.2006, both the units namely tower line unit and re-rolling mill got merged as a single excise unit and the same was approved by the Assistant Commissioner.

(f) It appears that on 30.6.2006, the Department requested the assessee to remit the differential amount for the closure of the audit and the assessee obliged, as it merely involved adjustment from out of their own CENVAT credit. It is relevant to note that the availability of excess CENVAT credit and remittance through CENVAT account are not disputed by the Department.

(g) However, after this payment, the Department demanded interest on the payment made through CENVAT. The assessee protested on the ground that there had been huge excess amount and payment through CENVAT credit. However, the Assistant Commissioner passed two orders on 6.9.2006 and 12.10.2006 adjusting interest from out of the eligible rebate of the assessee.

(h) The assessee filed two appeals to the Tribunal. Upon examination of the documents and upon confirmation of the facts by both the parties, the Tribunal passed a brief order allowing the appeals by applying the ratio in CCE, Delhi Vs. Maruti Udyog Ltd. [(2007) 214 ELT 173 (P&H)], which was upheld by the Supreme Court. It is against the common order passed in the two appeals filed by the assessee that the Department has come up with the present appeals.

4. We do not know as to how the present appeals are maintainable. The first reason as to why the appeals ought not to have been filed by the Department is that the order of the Tribunal was passed upon production of necessary documentary proof and confirmation of the same by both sides. The following extract from the relevant portion of the order of the Tribunal would make things very clear :

> "On production of necessary documentary proof before the Bench, both sides confirm that the appellants had sufficient credit in their cenvat account during the material period."

5. Therefore, the Department, after having confirmed the facts as borne out by documents produced before the Tribunal, could not have come up with the above appeals.

6. The second reason as to why the above appeals should not have been filed is that admittedly, there was a huge excess amount, available with the Department and what was sought to be done on 30.6.2006 was only an adjustment out of the same. Under Section 11 of the Central Excise Act, the Department itself could have adjusted the excess amount, even if there was any even at that time. When credit was available to the account of the assessee, the Department cannot act like Shylock demanding a pound of flesh.

7. Therefore, the questions of law are answered in favour of the second respondent/assessee. The civil miscellaneous appeals are dismissed. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

RS

To

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

2.The Commissioner of Central Excise,
Puducherry Commissionerate,
Goubert Avenue, Beach Road,
Puducherry 605 001.

3.The Section Officer,
V.R.Section,
High Court, Madras.

+2cc's to Mr.N.Viswanathan, Advocate, S.R.Nos.17705 & 17706
+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.17595

CMA.Nos.3649 & 3650 of 2010

MSM(CO)
CA(12/04/2016)