IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A. No. 22 of 2015 (O&M)

Date of Decision: 17.08.2016

Commissioner, Central Excise Delhi-III

.......Appellant

Versus

M/s Sarita Handa Export Pvt. Ltd. ......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Amit Goyal, Advocate
for the appellant.
Mr. R.C. Choudhary, Advocate
for the respondent.

RAJESH BINDAL,J.

The revenue has filed the present appeal against the order dated 30.4.2014 passed in Excise Appeal No. E/3603 of 2012, by the Customs, Excise & Service Tax Appellate Tribunal (for short 'the Tribunal') raising the following substantial questions of law:

(i) Whether the respondent can avail Cenvat Credit on the Inputs/Services used in the manufacture of exempted goods, in terms of Rule 6 of the Cenvat Credit Rules, 2004, as the respondent is clearing one of their products i.e. 100% cotton item under 'nil' rate of duty?

(ii) Whether the respondent has violated the provisions of Rule 3 and Rule 6 of the CENVAT Credit Rules, 2004?

(iii) Whether the Cenvat Credit wrongly availed by the respondent is liable to be disallowed and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 along with applicable interest?

The issue raised is regarding claim of input tax credit by the assessee. The goods manufactured were not leviable to any tax as exported out of the country. The adjudicating authority had accepted the claim to the assessee. The department aggrieved against the order passed by the adjudicating Authority had preferred appeal before the Tribunal.

The Tribunal, while referring to the judgments of Bombay High Court in Repro India Ltd. Vs. Union of India, 2009 (235) E.LT. 614 (Bom) and Himachal Pradesh High Court in Commissioner of Central Excise Vs. Drish Shoes Ltd. 2010 (254) E.L.T. 417 (H.P) and Bombay High Court in Union of India Vs. Sharp Menthol India Ltd, 2011 (270) ELT 212 dismissed the appeals filed by the Department.

Learned counsel for the revenue fairly did not dispute the fact that against the judgment of Himachal Pradesh High Court in **Drish Shoes Ltd's Case (supra),** the State preferred appeal before Hon'ble the Supreme Court, which was dismissed on July 12,2016, by passing the following order:

> "We find that the issue raised in this appeal is squarely covered by the judgment of the High Court of Judicature at Bombay in 'Union of India Vs. Sharp Menthol India Ltd.' (2011 (270) ELT 212) which has been approved by this Corut vide orders dated 04.04.2012.
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> The instant appeal is, accordingly, dismissed."

A perusal of the aforesaid order shows that the earlier judgment of Bombay High Court involving identical issue in Sharp Menthol India Ltd, case (supra), which was mentioned by the Tribunal in its orders, was upheld by Hon'ble the Supreme Court.

Once the issue involved in the present appeal has already been gone into by Hon'ble the Supreme Court and judgments of Bombay High Court and Himachal Pradesh High Court, have been upheld granting relief to the assessee, we do not find that any substantial question of law arises in the present appeal.

The same is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

17.08.2016
reema

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No