NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No.28 of 2012

M/s Kishan Steel Rolling Mill, through Proprietor Shri Rajesh Kumar Agrwal, Aged about 48 years, S/o late Shri Bhimsen Agrawal, 569 & 522/B Urla Industrial Area, Urla, Raipur (CG).

---- **Applicant**

Versus

Commissioner, Central Excise, Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh-492001.

---- Respondent

&

Tax Case No.30 of 2012

Shree Ram Steels through Proprietor Shri Krishna Kumar Agrawal, aged about 53 years S/o late Shri Bhimsen Agrawal, GE Road, Chandnidih, Tatibandh, Raipur (CG).

---- **Applicant**

Versus

Commissioner, Central Excise, Raipur, Central Excise Building, Dhamtari Road, Tikrapara, Raipur, Chhattisgarh-492001.

---- Respondent

For Applicants	:	Shri RS Marhas, Advocate.
For respondent	:	Shri Vinay Pandey, Advocate.

Hon'ble The Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per, Thottathil B. Radhakrishnan, CJ

18/04/2017

1. Though we had minuted on 17.04.2017 that these appeals are only against dismissal of application for rectification of mistake in the final order, a perusal of paragraph-5 of the memo of appeal would show that these are composite appeals against the final order and also the application dismissing the rectification of mistake. This fact is recorded.
2. Noticing that these appeals are composite appeals against the final order rendered by the Customs, Excise And Service Tax Appellate Tribunal (for

short, CESTAT) on an appeal filed by the department and also on an application filed by the assessee seeking for rectification of that order, whatever be the quality and content of the application for rectification of the order, the fact remains that it would be necessary and appropriate that we consider whether any substantial question of law is involved with the order of Tribunal rendered on the appeal on 25.05.2009. We proceeded to do so.

3. Heard learned counsel for the applicant and learned counsel for the revenue.

4. Learned counsel for the applicants argued that in the light of the order dated 22.05.2003 (Annexure P/4) issued by the Commissioner, it is not open to the revenue to deny refund. Per contra, learned counsel for the revenue argued that the present order is not dependent on the earlier proceedings and the Commissioner's order had become final since no appeals were filed against it. As is discernible from the order of CESTAT, the said matter went to the appellate Tribunal following a demand of duty regarding certain goods moved in April, 1996. The demand was on the premise that the assessee has availed the concessional rate of duty in terms of relevant exemption notification after the goods were removed. Show cause notice was issued noticing that concessional rate of duty was availed. The authority confirmed that demand. The said decision was given to effect under protest. The Commissioner (Appeals) allowed the assessee's appeal. The department challenges it before CESTAT. That was upheld.

5. The crucial facts necessary for adjudication of these appeals are that the assessee utilized the Cenvat Credit balance on 31.07.1997 for payment of pending dues. The amount, if at all, pending in Cenvat account on 31.07.1997 is to be treated as lapse under Rule 57F(17) of the Rules bringing in force. That situation will come into operation if the balance in the Cenvat Credit account is not utilized for the pending dues as on 31.07.1997. The

representative of the assessee had fairly mentioned before the CESTAT that as on 31.07.1997, PLA balance was nil. That being so, there is no infirmity or illegality in the order of CESTAT having interfered with the decision of subordinate authority and thereby allowing the appeal of the department.

6. We do not find that the impugned order of CESTAT issued on the appeal is, infact, dependent on Annexure P/4. The plea that Annexure P/4 order barred a second adjudication is therefore repelled.

7. For the aforesaid reasons, we do not find that any substantial question of law arises for decision in these appeals at the instance of assessee. Learned counsel for the revenue is therefore justified in pointing out that substantial question of law shown to have been framed by this court while issuing notice do not arise for decision. The said question do not call for being answered in these appeals. Even on merit, we are of the view that the CESTAT was justified in issuing order dated 25.05.2009 and there was no ground to issue any rectification as sought for by the applicants.

8. The appeals are dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(P. Sam Koshy)
Judge

inder