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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO. 506 OF 2005

Shri Gajanan Rolling Mills,
Plot No. B-24/1 MIDC Area, Nanded,
through its Partner Surendralal Barar S/o Jaswantlal Barar
occupation business R/o Nanded Dist. Nanded.

...APPELLANT

(Original Petitioner/Assessee)

VERSUS

1. Union of India
2. Registrar,
Customs Central Excise & Tax Appellate Tribunal,
Jai Center, P.D' Mello Road, Poona Street,
Masjid, Bandra (E), Mumbai – 400 009
3. Commissioner of Central Excise and Customs,
Town Centre, N-5, CIDCO,
Aurangabad 431 003.
4. Deputy Commissioner,
Central Excise and Customs,
Hingoli Naka, Nanded District Nanded.

... RESPONDENTS.

Mr. R.M. Sharma, Advocate for the appellant.

Mr. D.S. Ladda, Advocate for respondents.

**CORAM: R.D. DHANUKA &
SUNIL K. KOTWAL, JJ.**

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RESERVED ON : 18th August, 2017.

PRONOUNCED ON : 29th August 2017

J U D G M E N T (PER R.D. DHANUKA, J.)

This appeal filed under section 35-G of the Central Excise Act, 1944, is directed against the order dated 24th October 2003 passed by the Customs, Excise and Service Tax Appellate Tribunal (Western Region Bench) at Mumbai, holding that the benefit of deemed credit facility was not admissible to the appellant and setting aside the impugned order of the Commissioner (Appeals), allowing the appeal of the Revenue, following the Larger Bench Decision of the Tribunal in case of **Digambar Foundary Vs. Commissioner of Central Excise, Allahabad, {2000(118) E.L.T. 85 (Tribunal-LB)}**.

2. Some of the relevant facts for deciding this appeal are as under:

The appellant in this case has availed Modvat Credit facility, as envisaged in Notification No. 1/93 Central Excise dated 28th February 1993, being the registered Small Scale Unit, holding SSI registration certificate.

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3. On 2nd March 1995 and 25th May 1995 the Superintendent, Central Excise, Nanded, issued show cause notices to the appellant. The appellant filed reply to the said show cause notices and denied the said payment on various grounds. On 19th July 1996, the learned Additional Commissioner, Central Excise, Aurangabad, passed an order confirming the order passed by the learned Commissioner of Central Excise and Customs, demanding Rs. 6,09,761/- and also imposing penalty of Rs. 50,000/- upon the appellant.

4. Being aggrieved by an order dated 19th July 1996 passed by the learned Additional Commissioner Central Excise, Aurangabad, appellant herein filed an appeal before the Commissioner of Central Excise (Appeals), Pune, who decided the said appeal in favour of appellant and held that appellant was entitled to the benefit of Deemed Credit Order to the tune of Rs. 4,45,839/- even after crossing the limit of Rs. 75,00,000/- as long as specified clearances of the appellant and not crossed limit of Rs. two crores as per Notification dated 28th February 1993.

5. Being aggrieved by the said order passed by the learned Commissioner, Central Excise (Appeals), the Commissioner of

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Central Excise and Customs filed an appeal on 2nd June 1997 before the said Tribunal. It is the case of appellant that the said Tribunal passed an *exparte* order against the appellant and confirmed the disallowance of Modvat Credit permissible to the appellant to the tune of Rs. 6,09,761/- and imposing penalty of Rs. 50,000/-. The appellant herein filed an application on 27th April 2004 for recalling the said *exparte* order passed by the said Tribunal. The Tribunal refused to interfere with the said application for recall of the said order dated 24th October 2003 by passing order on 28th July 2004. The appellant thereafter filed Writ Petition bearing no. 2403 of 2004 in this Court.

6. By an order dated 2nd March 2005 this Court granted liberty to the appellant to file an appeal under Section 35-G of the Central Excise Act and also permitted to withdraw the said Writ Petition. The appellant accordingly filed this appeal under Section 35-G of the Central Excise Act, 1944, in this Court.

7. By an order dated 8th September 2006, the Division Bench of this Court admitted this First Appeal on the following substantial questions of law:

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- “1. Whether the Tribunal was correct in upholding that the benefit of deemed credit to a unit availing of the exemption in terms of Notification No. 1/1993 C.E. Dated 23.2.1993 was not available after it crosses the value of the clearances of Rs. 75,00,000/- ?
2. Whether the Tribunal erred in passing the impugned order, by misreading and misconstruing the provisions of exemption notification No. 1/1993 dated 28/2/1993 correctly by not adopting the principles of purposive interpretation of beneficial exemption notification issued U/s. 5-A of Central Excise Act, 1944 ?”
8. This appeal was heard alongwith First Appeal No. 95 of 2005. In view of the fact that the issue involved in this appeal and in the First Appeal No. 95/2005 were identical, the said First Appeal No. 95 of 2005 was argued at length by Mr A.P. Kolte, learned Counsel for the appellant in said First Appeal. Mr R.M. Sharma, the learned Counsel for the appellant in this appeal, adopted the submissions made by the learned Counsel for the appellant in First Appeal No. 95/2005.

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9. By a separate order passed by this Court in the said First Appeal No. 95/2005, this Court has allowed the said First Appeal after adverting to the four judgments of High courts in cases of:

- (I) **Vinubhai Steel Co. Pvt. Ltd. Versus Commissioner of Central Excise { 2015 (330) E.L.T. 858 (Guj.)**
(Paragraph 22),
- (II) **Accurex Steel Rolling Mills Versus Commissioner of Ex. Panchkula {2016 (339) E.L.T. 5 (P & H)**
(Paragraph 13)
- (III) **Ganesh Steels Versus Cestat, Chennai { 2013 (294) E.L.T. 529 (Mad.)** (Paragraphs 13 to 16)
- (IV) **Sood Steel Industrial (P) Ltd. Versus Commissioner of Central Excise { 2009 (241) E.L.T. 186 (H.P.)**
(Paragraphs 13 and 14)

10. Learned Counsel for the parties state that the facts of this case are also identical to facts in First Appeal No. 95 of 2005 and, thus, the said judgment that would be delivered by us in the said First Appeal, would apply to the facts of this case also. We are, thus, not rendering separate reasons for allowing this appeal.

11. For the reasons recorded aforesaid, substantial

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questions of law (1) and (2) are answered in negative and is decided in favour of assessee, and against the Revenue. Hence, we pass the following order.

- (I) Order dated 24th October 2003 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Regional Bench at Mumbai, is set aside.
- (II) First Appeal No. 506 of 2005 is allowed in aforesaid terms. No order as to costs.

(SUNIL K. KOTWAL)
JUDGE.

(R.D. DHANUKA)
JUDGE.

pjm