IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A. Nos.1278 and 1606 of 2017

M/s.The Ramco Cements Limited,
(formerly Madras Cements Limited),
PAC Ramasamy Raja Nagar,
Alattiyurworks Post, Cement Nagar,
Sentturai Taluk,
Ariyalur District-621 730. ** ... Appellant in both the appeals

Vs.

1. Customs Excise and Service Tax
Appellate Tribunal (Southern Bench),
Shastri Bhavan, Annexe Building,
1st Floor, Haddows Road,
Chennai-600 006.

2. The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Tiruchy. .. Respondents in CMA No.1278/17

The Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Tiruchy. .. Respondent in CMA No.1606/17

** Cause titled accepted vide order dt.12.06.2017
made in CMPs No.8882 and 8883/2017 in CMA No.1278/2017 &
CMA No.1606/2017

Prayer in CMA No.1278/2017 : Appeal filed under Section 35G of the Central Excise Act, 1944, praying to set aside the Misc Order No.40555 of 2016, dated 22.12.2016, received by the appellant on 23.01.2017, in Appeal No.E/ROM/40318/2016, E/69/2004 DB, passed by the first respondent.

Prayer in CMA No.1606/2017 : Appeal filed under Section 35G of the Central Excise Act, 1944, praying to set aside the order passed in Final Order No.41244 of 2015, dated 10.09.2015, passed by the first respondent.

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| For Appellant in both the appeals | : Mr.P.J.Rishikesh |
| For Respondents in both the appeals | : Mr.A.P.Srinivas, Standing Counsel for R2 in CMA No.1278/17 and sole Respondent in CMA No.1606/17 |

## C O M M O N   J U D G M E N T

(judgement of the Court was delivered by RAJIV SHAKDHER,J.)

1. These are two appeals, which have been preferred against two separate orders passed by the Customs, Excise and Service Tax Appellate Tribunal (in short 'the Tribunal').

2. The appeals have been preferred by the Assessee, i.e., Ramco Cements Limited (formerly described as "Madras Cements Limited").

2.1. CMA No.1606 of 2017, has been preferred against the impugned judgement and order passed by the Tribunal, which is dated 10.09.2015.

2.2. In so far as CMA No.1278 of 2017 is concerned, the same has been preferred by the Assessee against the rectification order dated 22.12.2016, passed by the Tribunal.

2.3. The period in issue, with which, these appeals are concerned spans between April 1997 and May 1997.

3. The record shows that the Assessee had claimed MODVAT credit in respect of the goods noted hereunder qua, the period in issue, to the extent of Rs.19,11,892/-; the break-up of which, is as follows :

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|---|---|
| i. Dumpers | - Rs.8,10,570/- |
| ii.Hindustan Loaders | - Rs.6,55,000/- |
| iii.Emitting Electrodes | - Rs.61,200- |
| iv.Steel Casing | - Rs.3,822/- |
| v. Classifier Housing | - Rs.83,828/- |
| vi.Steel Structure | - Rs.15,304/- |
| vii.Steel Wire | - Rs.2,12,168/- |

3.1. The Tribunal, via its judgement dated 10.09.2015, accepted the Assessee's claim for MODVAT credit in respect of the first six (6) items referred to hereinabove, while denying its claim with respect to the seventh item, namely, steel wire.

3.2. The MODVAT claim vis-a-vis steel wire, as noted above, was pegged at Rs.2,12,168/-.

3.3. In reaching this conclusion, the Tribunal relied upon its earlier order passed in the Assessee's own case, i.e., Madras Cements Limited V. Commissioner of Central Excise, Trichy, reported in 2006 (202) E.L.T. 106 (Tri.).

4. The Assessee, evidently, carried the matter in appeal to the Supreme Court, which rendered its judgement on 07.10.2015, which was passed in Civil Appeals No.3115, 3114 and 3116 of 2007, titled : Madras Cements Limited V. Commissioner of Central Excise, Trichy, 2015 (325) E.L.T. 239 (S.C.).

4.1. The Assessee, having obtained a favourable judgement from the Supreme Court, which according to it, also dealt with the goods in issue, i.e., steel wire, moved a rectification application before the Tribunal.

4.2. Even though, the judgement of the Supreme Court, evidently, was brought to the notice of the Tribunal, it dismissed, as indicated above, the rectification application vide its order dated 22.12.2006.

4.3. It is, in these circumstances, that the Assessee has preferred the captioned appeals.

5. Mr.Rishikesh, who appears for the Assessee, makes the submission that in view of the judgement of the Supreme Court rendered in its own case, which relates to the goods in issue, i.e., steel wire, these appeals would have to be allowed. Learned counsel further says that even though, the rectification order passed by the Tribunal, is, pivoted on an erroneous understanding as to when limitation is to commence, that perhaps, would not come in the way of this Court, if, it, otherwise, is persuaded to hold that the Assessee ought to have succeeded on merits.

6. Mr.A.P.Srinivas, who appears for the Revenue, in the first instance, took the objection that the goods in issue, i.e., steel wire, were, perhaps, not covered by the judgement of the Supreme Court, to which we have made a reference above. Mr.Srinivas, however, fairly stated that, if, the goods in issue were, in fact, covered, then, without doubt, the Assessee would succeed in the present appeals.



7. In order to satisfy ourselves as to whether the goods in issue, i.e., steel wire, were the subject matter of the proceedings before the Supreme Court, we called upon learned counsel for the appellant to not only file a copy of the Special Leave Petition (SLP) book, but also the counter affidavit preferred by the Revenue in the matter.

8. Our examination of the SLP filed by the Assessee, the copies of which, have been placed before us, persuade us to hold

that steel wire, was adverted to as item No.20 in the judgement of the Tribunal, from which an appeal was carried to the Supreme Court. This aspect stands referred to in paragraph 3(ii) and ground (ix) of the SLP.

9. The Supreme Court, while, dealing with the matter made the following observations, on which, reliance is placed by the Assessee :

> "4. It is pointed out by Mr.Mohan Prasaran, learned Senior Counsel appearing for the Appellant-Assessee, that while making these comments, the CESTAT has erred inasmuch as even as in the show cause notice issued by the Respondent-Department it was admitted that the goods are not in the nature of capital goods and these were used for construction of concrete structure and foundation on which the various heavy machineries in a cement plant was to be erected. On that basis, it is argued that the goods in question were captively used for the construction of the plant and had nothing to do with the mining which is accepted by the Department itself in the show cause notice. After going through the show cause notice, we find that the aforesaid contention of the learned Senior Counsel for the Assessee is correct. Accordingly, we are of the opinion that there was no need to remand the case back to the Commissioner (Appeals) as on admitted facts when the principle laid down in Vikram Cement's case is applied, the Assessee was not liable to pay any duty. The order of the CESTAT remitting the case back to the Commissioner (Appeals) is thus, set aside allowing these appeals."

10. Having regard to the observations of the Supreme Court, we are of the view that CMA No.1606 of 2017, will have to be allowed and the order dated 10.09.2015, would have to be set aside. It is ordered accordingly.



11. In so far as CMA No.1278 of 2017 is concerned, we are of the view that, in a sense, it has lost relevance for the Assessee, since, the impugned judgement of the Tribunal has been set aside. However, having noticed the observations made by the Tribunal in paragraph 4 of its order dated 22.12.2016, we would be remiss in our duty, if, we fail to observe that the Tribunal has misdirected itself in law in recording that the period of limitation would commence from the date, when, the order was dictated in Court and, not from the date, when, it was signed.

11.1. According to us, the period of limitation cannot, but commence from the date, when, the order is signed and thereafter, upon its receipt by the Assessee. The observations made by the Tribunal in paragraph 4, according to us, are erroneous in law.

12. Accordingly, we are inclined to set aside even the order dated 22.12.2016. It is ordered accordingly. CMA No.1278 of 2017 will, thus, also stand allowed.

13. There shall be, however, no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs Excise and Service Tax
   Appellate Tribunal, (Southern Bench),
   Shastri Bhavan Annexe,
   Chennai.

2. The Commissioner of Central Excise,
   No.1, Williams Road, Cantonment,
   Tirichy

+2ccS to Mr.P.J.Rishikesh, Advocate, S.R.No.43198 & 43199
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.43600

C.M.A.Nos.1278 and 1606 of 2017

KK(CO)
CS/12/07/17