IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.04.2017

CORAM

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

C.M.A.No.2525 of 2015
And
M.P.No.1 of 2015

M/s.Ambi Ply Panels and Doors ... Appellant

Vs.

The Commissioner of Central Excise,
No.1-Foulks Compound,
Anaimedu, Salem - 636 001. ... Respondent

Prayer: Appeal filed under Section 35 G of the Central Excise Act, 1944, against the order dated 13.08.2015 passed in Misc. Order No.41060 of 2015 by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Ms.D.Naveena
For Respondent : Mr.A.P.Srinivas

J U D G M E N T

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

1.This appeal has been filed under 35 G of the Central Excise Act, 1944, whereby, challenge is laid to the final order dated 13.08.2015, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai (in short, the Tribunal).

2.By virtue of the impugned judgment and order, appellant's/ Assessee's miscellaneous application, to seek extension of time, in complying with the directions contained in the stay order dated 28.11.2014, and utilisation of Cenvat credit was dismissed.

2.1.Pertinently along with the appellant's application, the applications of the thirteen (13) other appellants, (who were also aggrieved by the order of the Commissioner of Appeals, and are connected with the appellant herein), had also been filed, which were dismissed by the impugned order.

2.2. The Tribunal dismissed the applications of the co-applicants on the ground that the conditions of stay, which were stipulated in the order dated 28.11.2014, were directed towards the main appellant, i.e., the appellant herein (M/s.Ambi Ply Panels and Doors).

2.3. To be noted, the appellant herein was treated as the main appellant before the Tribunal.

3.The reason given by the Tribunal for passing the impugned order is that, despite several opportunities, the pre-deposit amount had not been fully deposited by the appellant herein (hereafter referred to as the main appellant).

3.1.A perusal of the impugned judgment and order would show that against Rs.85 Lakhs, the main appellant had deposited only Rs.31 Lakhs.

4.Ms.Naveena, who appears for the appellant, says that since then, a further sum of Rs.16 Lakhs has been deposited.

4.1.Furthermore, Ms.Naveena, says that the main appellant, will deposit an additional sum of Rs.3 Lakhs, within two weeks from the date of receipt of a copy of this order.

5.To be noted, the captioned appeal was admitted by this Court on 19.11.2015, when, the following questions of law, were framed for consideration:

> "1)Can the right to claim cenvat credit be postponed or rejected, when the settled law is that credit cannot be denied, once it is proved by way of evidences that duty is paid on the inputs/raw materials that are used in the manufacture of final products on which duty is demanded?
>
> 2)Can the benefit of the circular 996/3/2015-CX dted 28.2.2015 for payment of arrears in instalments be denied, especially, when the balance amount is Rs.10,72,802/- after adjusting the cenvat credit of Rs.38,27,198/- and case payment of Rs.36,00,000/- has been made?
>
> 3)Can the dismissal of the miscellaneous application dated 27.1.2015, acknowledged on 30.1.2015 by order 41060/2015 dated 13.8.2015 be considered as proper and legal, when no finding has been given on the right

to claim cenvat credit?"

6.Mr.Srinivas, who appears for the Revenue, argues that the questions of law, framed in the matter, do not arise, from the impugned judgment and order.

7.Ms.Naveena, who appears for the appellant/ Assessee concedes as much.

8.Therefore, the questions of law as framed, need not detain us. We decline to answer the questions of law.

9.Notwithstanding the aforesaid, the impugned order will have to be set aside on the ground that the Tribunal has failed to address itself to the crucial aspect, as to whether or not, the amount directed to be paid as pre-deposit would cause financial hardship to the main appellant/ Assessee.

10.It can be safely assumed that because interim stay was granted by the Tribunal, vide order dated 28.11.2014, albeit, on condition of pre-deposit of Rs.85Lakhs, the main appellant had been able to demonstrate that it had a prima facie case in its favour.

11.The record shows that the Adjudicating Authority had denied to the appellant the benefit of Notification numbered 8/03 CE dated 01.03.2003 for the period spanning between 20.07.2008 and 2012-13.

11.1.Consequently, a demand in the sum of Rs.2,87,70,089/- along with interest and penalty of equal amount, was raised on the main appellant i.e., appellant no.1.

11.2.The main appellant along with the other appellants, on the other hand had not only questioned the quantification of the demand, which according to them, should not have exceeded a sum of Rs.83,64,207/-, but also claimed that they were eligible for being accorded benefit of cenvat credit amounting of Rs.26,86,563/-. Their case, thus, appears to be that even in so far as the balance demand in the sum of Rs.56,79,644/- (Rs.83,64,207/- minus Rs.26,86,563/-) is concerned, since it related to clearance by job workers, they were entitled to benefit of another Notification i.e., Notification No.83/94-CE dated 11.04.1994.

12.It is, in these circumstances, that the main appellant along with other appellants pleaded for waiver of the entire pre-deposit.

13.Having regard to the circumstances, as emanating from the record, it would suffice, if, for the moment, the main appellant deposits total amount equivalent to Rs.50 Lakhs as against Rs.85 Lakhs which has been ordered to be deposited by the Tribunal. Since, Rs.47 Lakhs is said to have been already deposited, the appellant will deposit a further sum of Rs.3 Lakhs, within two weeks from the date of receipt of a copy of the order.

13.1.The Tribunal, will verify as to whether a total sum of Rs.50 Lakhs is deposited.

13.2.In case, compliance is made in that behalf, the Tribunal will list the appeal for hearing.

14.Resultantly, the impugned order is set aside and the appeal is disposed of in terms of the directions, set out above. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Commissioner of Central Excise,
No.1-Foulks Compound,
Anaimedu, Salem - 636 001.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.22412
+1cc to Mr.Durairaj, Advocate, SR.No.22992(29/06/2017)

C.M.A.No.2525 of 2015
And
M.P.No.1 of 2015

RJ(CO)
RS(28/06/2017)