

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2017

Coram

The Honourable Mr. JUSTICE RAJIV SHAKDHER,
And
The Honourable Mr. JUSTICE R.SURESH KUMAR

C.M.A.Nos.641 to 644 of 2011
and 2057 to 2062 of 2012

M/s.Church's Auxiliary for Social Action (CASA),
Sector Resource Centre,
12/1, Thirupurasundari Nagar,
2nd Street, 1st Floor,
Thenpathi, Sirkazhi,
Nagapattinam.
(Earlier Having office at No.6,Radha Nagar,
Beach Road,Cuddalore-1)

..Petitioner in CMA.NO.641,642 of 2011

M/s.Church's Auxiliary for Social Action (CASA),
Sector Resource Centre,
12/1, Thirupurasundari Nagar,
2nd Street, 1st Floor,
Thenpathi, Sirkazhi,
Nagapattinam.
(Earlier Having office at No.62,Cooks
Nagar,Vellipalayam,Nagapattinam 611 001)

..Petitioner in CMA.NO.643 of 2011

M/S.CHURCH'S AUXILIARY FOR
SOCIAL ACTION (CASA) SECTOR RESOURCE CENTRE
3/18 MAIN ROAD MOONDRADAIPPU TIRUNELVELI.

(EARLIER HAVING OFFICE AT NO.58 GRACE
COTTAGE, TRIVANDRUM ROAD, PALAYAMKOTTAI
TIRUNELVELI-2.)

..Petitioner in CMA.NO.644 of 2011

M/S CHURCH'S AUXILLARY FOR

SOCIAL ACTION(CASA) RESOURCE CENTRE , 3/36 ,
PACHIANATHAPURAM , MOONDRADAIPPU,
TIRUNELVELI 627 152

..Petitioner in CMA.NO.2057 to 2062 of 2012

Vs

The Customs Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Chennai.

..1st Respondent in the all the CMA's

The Commissioner of Central Excise,
Beach Road,
Puducherry.

...2nd Respondent in CMA.No.641,642 of 2011

The Commissioner of Central Excise,
Trichy.

...2nd Respondent in CMA.No.643 of 2011

The Commissioner of Central Excise,
Tractor Road NGO-A Colony,
Perumalpuram,Tirunelveli 627 007.

..2nd Respondent in CMA.NO'.644/2011
and CMA.Nos.2057 to 2062 of 2012.

Prayer in C.M.A.Nos.641 to 644 of 2011:

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the order dated 23.09.2010 passed in Final Order No.1031/10 by the Customs, Excise and Service Tax Appellate Tribunal, Chennai vide F.O.Nos.1031,1030,1070 and 1071 of 2010, dated 23/9/2010,23/9/2010,07/10/2010 and 07/10/2010 respectively in the relevant Appeal Nos.E/128/10,E/127/10,E/690/2009 and E/281/2010.

Prayer in CMA.Nos.2057 to 2062/2012:

Appeal filed under Section 35 G of the Central Excise Act, 1944 against the final orders passed by the Central Excise and Service Tax Appellate Tribunal Chennai Vide F.O.Nos.1158,1159,1160,1161,1162,1163 dated 24/10/2011 in Appeal Nos.E/675 to 680/2010.

For Appellant in all : Mr.K.Jayachandran
these appeals

For Respondents in all : Mr.A.P.Srinivas,
these appeals Senior Standing Counsel
for Customs

COMMON JUDGMENT

(Judgment of the Court was made by Rajiv Shakdher, J.)

1. CMAs No.641 to 643 of 2011 have been preferred against the judgment and order of even date, i.e., dated 23.09.2010, passed by the Customs, Excise and Service Tax Appellate Tribunal (in short "The Tribunal"), while CMA No.644 of 2011 has been preferred against the judgment and order dated 07.10.2010 of the Tribunal. CMAs No.2057 to 2062 of 2012 have been preferred against the judgement and order of even date, i.e., 24.10.2011.

2. At the point in time, when, CMAs No.641 to 644 of 2011, were admitted, the following substantial questions of law were framed for consideration, by this Court :

- (1) Whether in the facts and circumstances of the case, the Tribunal is right in applying para 5 of Notification No.32/2005-CE dated 17.8.2005 to mean that sanction of refund only on duty paid on cement and steel utilized in the construction of the houses for Tsunami affected persons.
- (2) Whether the Notification No.32/2005-CE dated 17.8.2005 to be interpreted for sanction of refund of amounts as per Para 4 of the Notification alone to say, 6% of the cost of construction per house, subject to the maximum of Rs.9000.00 per house constructed or only the amount of duty paid on cement and steel utilized in the manufacture of Tsunami houses.
- (3) Whether the restriction imposed by the first appellate authority, confirmed by the Tribunal is right to hold that sanction of refund be subject to verification of the duty paid nature of the goods as evidenced by documents.
- (4) Whether in the facts and circumstances of the case, the eligibility to get refund of lump sum as prescribed under Para 4 of the Notification be restricted by putting a condition which is specifically absent in the Notification itself.
- (5) Whether in the facts and circumstances of the case, one to one correlation of the materials like cement and steel utilized and its duty paid documents is not relevant when the said materials are not consumed in construction of a particular

segment of houses but used simultaneously in various sites.

- (6) Whether the Notification can be interpreted to mean that the intention of the Government in granting relief is to give actual amount of duty paid on cement and steel only when such a restriction is not stipulated in the Notification.
- (7) Whether the first appellate authority and the Tribunal is justified in interpreting the Notification to grant relief of refund only on actual duty paid on cement and steel evidenced by duty paid documents.
- (8) Whether in the facts and circumstances of the case, the Tribunal is justified to deny the refund claim relying on Para 5 of the Notification, importing duty paid nature of goods, when it refers only to the period during which duty paid materials are purchased.

2.1. Similarly, while admitting CMAs No.2058 to 2062 of 2012, this Court framed the following substantial question of law for consideration :

"Whether the Notification No.32/2005-CE dated 7.8.2005 (SIC "17.08.2005") to be interpreted for sanction of refund of amounts as per Para 4 of the Notification alone to say, 6% of the cost of construction per house, subject to the maximum of Rs.9000/- per house constructed or only the amount of duty paid on cement and steel utilized in the manufacture of Tsunami houses."

3. According to the learned counsel for the appellant, Mr.K.Jayachandran, the entire appeal pivoted on the interpretation of the Notification bearing No.32/2005-CE, dated 17.08.2005, read with amendment Notification No.35/2005-C.E., dated 29.11.2005; amendment Notification No.30/2006-C.E., dated 09.05.2006 and amendment Notification No.60/2008-C.E., dated 24.12.2008.

3.1. The learned counsel for the appellant says that via the impugned judgments, the authorities below have restricted the refund claimed by the appellant to the extent of duty paid on cement and steel, utilised in the construction of houses, which were affected by tsunami.

3.2. The learned counsel further submits that as per clause 3(d) of the Notification, dated 17.08.2005, as amended via the aforementioned notifications, the refund, ought to have been sanctioned at the rate of 6% of the cost of construction of such like houses, subject to a maximum of Rs.9,000/- per house.

4. Mr.A.P.Srinivas, who appears on behalf of the Revenue, argues to the contrary and in the support of his submissions relies upon the orders of the authorities below, in particular, the impugned judgments for the purposes of disposal of the appeal.

4.1. Therefore, the only aspect that requires to be noted is the contents of the Notification, since, much turns on the content of the Notification and the interpretation, which is to be placed on clause 3(d) of the said Notification, on which reliance is placed by the appellant. The entire Notification is, thus, extracted hereafter, for the sake of convenience :-

"Exemption to cement and steel used in construction of houses in Tsunami affected areas of Tamil Nadu, Andhra Pradesh, Kerala, Pondicherry and Andaman & Nicobar Islands. - In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) read with section 91 and section 93 of the Finance (No.2) Act, 2004, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts cement falling under Chapter 25, and steel falling under Chapters 72 or 73 of the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as said goods) used in construction of houses, in tsunami affected districts of States of Tamil Nadu, Andhra Pradesh, Kerala and Union Territories of Pondicherry and Andaman and Nicobar Islands (hereinafter referred to as said areas), from the whole of the duty of excise leviable thereon under the said Acts (hereinafter referred to as the said duties).

2. The exemption contained in this notification shall apply only if the said goods are used in construction of houses, including temporary shelters (hereinafter referred to as such houses) by Non Government Organization or Voluntary Agency or Private-Public Enterprise or Rehabilitation Organization or Trust or any agency, approved by the concerned State or Union Territory Government (hereinafter referred to as approved construction agencies), for constructing such houses in

the said areas, for rehabilitation work.

3. The exemption contained in this notification shall be given effect to in the following manner:-

(a) The manufacturer of the said goods shall pay duties as applicable at the time of clearance and shall not be eligible for the refund of said duties.

(b) The approved construction agency shall submit a statement of quality and value of the said goods used in construction of such houses along with documents evidencing payment of duty on the said goods to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, (hereinafter referred to as jurisdictional excise officer), in whose jurisdiction the area where such houses are being constructed is situated;

(c) The approved construction agency shall file a claim for refund of the said duties paid on the said goods procured and utilised in construction of such houses by it along with a self certified consumption certificate of the said goods to the jurisdictional excise officer, on a quarterly basis, within sixty days from the end of the relevant quarter and such period may be extended by the jurisdictional excise officer by another sixty days;

(ca) The approved construction agency, on completion of such houses, shall submit a completion certificate from the District Collector along with consolidated consumption certificate covering all the earlier refund claims, duly certified by a Chartered Engineer and countersigned by the concerned District District Collector or Sub-Divisional Magistrate, to the jurisdictional excise officer;]

Provided that refund claim for the period April, 2005 to June, 2005 may be filed by the 30th September, 2005.

(d) The jurisdictional excise officer shall, after satisfying himself that the said goods have been used for the specified purposes, and on production of documentary evidence about the duty paid on the said goods, and the completion certificate and the consolidated consumption certificate as

specified in clause (ca) above, by the approved construction agency, sanction the refund claim, at the rate of 6% of the cost of construction of such house or houses, as the case may be, subject to a maximum of Rs.9000 per house constructed; and

(e) The refund under clause (d) shall be given only to the concerned approved construction agency.

4. The amount of refund shall not exceed 6% of the cost of construction or Rs.9000 per house constructed, whichever is less, in any case.

5. The exemption contained in this notification shall only be in respect of said duties paid on the said goods, which have been used in such houses constructed on or after the 1st April, 2005 and on or before [31st July, 2007."

5. A perusal of the Notification would show that the purpose of issuing the Notification, which is an exemption Notification was to reimburse the specified goods from "whole of the duty of excise leviable" under the Central Excise Act, 1944 (in short "the CE Act"). This aspect is evident upon the reading of the first part of Notification, wherein, it has been indicated that in exercise of the powers conferred under Section 5A(1) of the CE Act, read with Sections 91 and 93 of the Finance (No.2) Act, 2004, the Central Government is satisfied that it is in public interest to exempt the cement and steel used in construction of houses, which were affected by tsunami in any concerned districts located in the State of Tamil Nadu, Andhra Pradesh, Kerala and the Union Territories of Pondicherry and Andaman and Nicobar Islands from "the whole of the duty of excise leviable thereon under the said Acts".

5.1. Under clause 2 of the said Notification, it is made clear that the exemption would apply only, if, the said goods, which would be steel and cement, are used in the construction of houses, which would include temporary shelters. These houses, or, temporary shelters could be built by Non-Governmental Organization or Voluntary Agency or via Private-Public Enterprise or Rehabilitation Organization or Trust or any agency approved by the concerned State or Union Territory Government, to which we have made a reference above.

5.2. The manner in which Notification would apply is set out in clause 3 of the Notification. Broadly, the Notification envisages payment of duty, in the first instance, and thereafter, enables triggering of a claim for refund. The manner, in which, verification is to be carried out, as regards the quantity of goods used, is provided in clause 3(b).

5.3. The other steps to be taken for making a tenable claim for refund are provided in clauses 3(c) and 3(ca) of the aforementioned Notification.

5.4. The clause, on which, though, emphasis is placed by the appellant, as indicated at the very outset, is clause 3(d). Based on the said clause, Mr.K.Jayachandran, learned counsel for the appellant, says that the refund had to be allowed to the appellant at the rate of 6% of the cost of construction, subject to a maximum of Rs.9,000/- per house.

6. In our view, the said submission fails to take note of clause 5, as rightly pointed out by the Tribunal, which, clearly, provides that the exemption contained in the Notification shall only be in respect of the duties paid on the cement and steel, which have been used in tsunami affected houses (including temporary shelters) constructed on or after the 01.04.2005 and on or before 31.07.2007.

7. In our view, if, the opening part of the Notification, as noticed by us, is read along with clause 5, the only conclusion one could reach is that the entire object and purpose of the Notification was to reimburse the whole of the duty in respect of cement and steel, which was used in construction of tsunami affected houses and/or temporary shelters.

8. It does not appear to be the purpose of the Notification that irrespective of amount forked out by the appellant by way of duty paid on cement and steel, it would be entitled to claim refund at the rate of 6% of the cost of construction, subject to a maximum of Rs.9,000/- per house, whichever is less.

8.1. In our opinion, upon the notification being read in the manner, as indicated above, the only conclusion one can reach, is that, it envisages reimbursement of duty paid on cement and steel used in the construction of tsunami affected houses and/or temporary shelters.

9. Therefore, we find no reason to interfere with the impugned judgments. The Questions of law, as framed, have to be answered in favour of the Revenue and against the assessee/appellant.

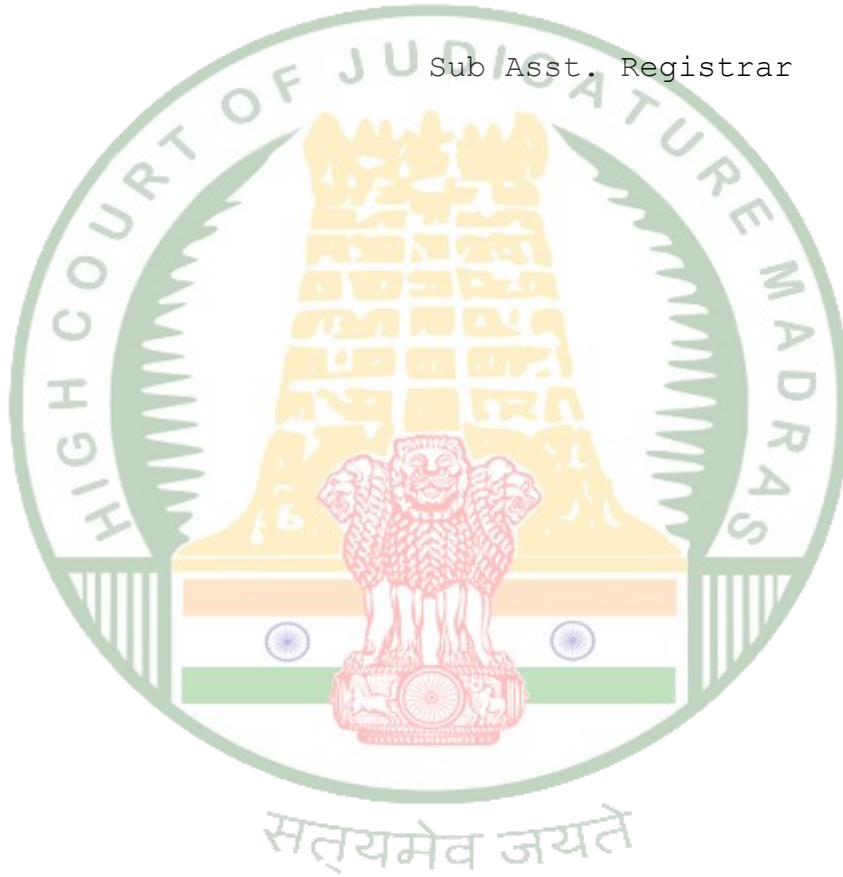
10. The appeals are, accordingly, dismissed. Resultantly, pending miscellaneous petitions shall stand closed. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

asi/gg



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To

1. The Customs Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Chennai.

2. The Commissioner of Central Excise,
Beach Road,
Puducherry.

3. The Commissioner of Central Excise,
Trichy.

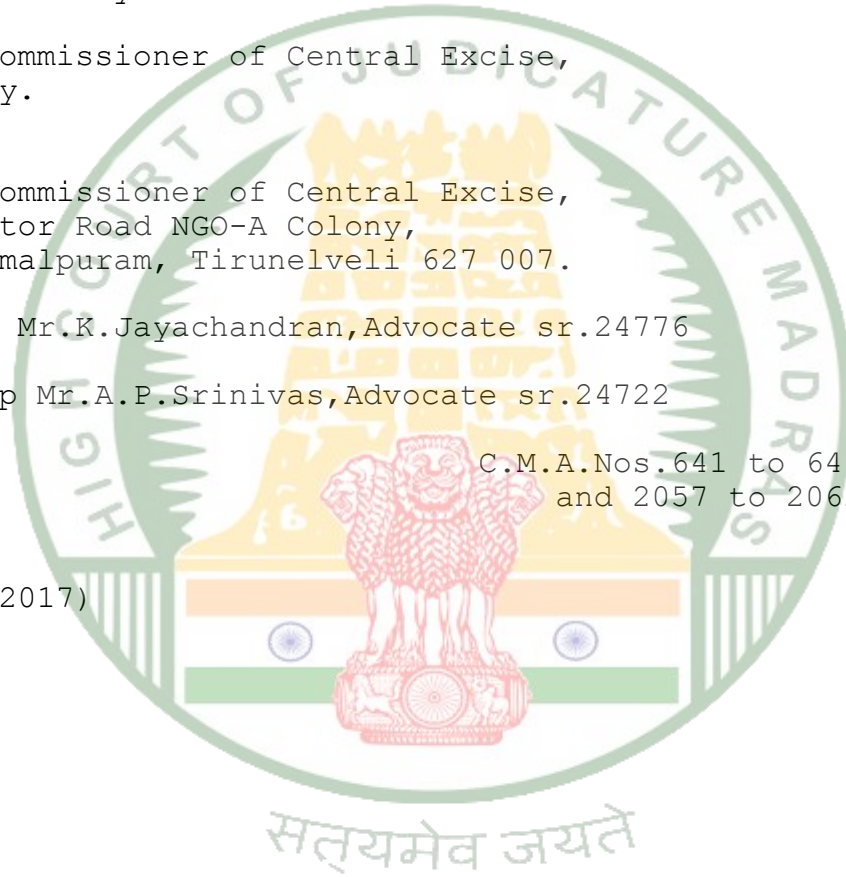
4. The Commissioner of Central Excise,
Tractor Road NGO-A Colony,
Perumalpuram, Tirunelveli 627 007.

+1cc to Mr.K.Jayachandran, Advocate sr.24776

+1cc top Mr.A.P.Srinivas, Advocate sr.24722

C.M.A.Nos.641 to 644 of 2011
and 2057 to 2062 of 2012

mv(co)
ss(3/7/2017)



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