

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2223 of 2017

Commissioner of Central Excise,
Salem.

... Appellant

Vs.

1.M/s.Madras Aluminium Company,
Mettur Dam.

2.The Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
1st Floor, Shastri Bhavan Annexe,
Haddows Road, Chennai 600 006.

... Respondent

Prayer: Civil Miscellaneous Appeals are filed under Section 35G of Central Excise Act, 1944, against the Final order Nos.729 to 736 of 2005, dated 09.05.2005, on the file of the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.V.Sundareswaran

JUDGMENT

(Judgement of this Court was made by S.MANIKUMAR, J.)

Arising out of the common Final Order Nos.729 to 736 of 2005, dated 09.05.2005, on the file of the Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, the-Commissioner of Central Excise, Salem, has filed the instant appeal, on the following substantial questions of law,

"(i) That the items under dispute falling under Chapter 73 are in the nature of capital goods as per Erstwhile Rule 57Q of Central Excise Rules, 1944 and

(ii) Goods which were not use directly or indirectly for the manufacture of final product are eligible inputs as per erstwhile 57A of Central Excise Rules, 1944."

2. On this day, when the matter came up for hearing, Mr.V.Sundareswaran, learned counsel appearing for the appellant has referred to a decision of the Hon'ble Supreme Court in Commissioner of Central Excise, Coimbatore v. Jawahar Mills Ltd., reported in 2001 (6) SCC 274 and also brought to the notice of this Court, a decision in Saraswati Sugar Mills v. Commissioner of Central Excise, Delhi-III reported in 2014 (15) SCC 625. However, he submitted that earlier, when the Commissioner of Customs and Central Excise, Salem, has filed C.M.A.No.1301 of 2005, dated 31.12.2012, a Division Bench of this Court, while dismissing the appeal filed by the Revenue, held as follows:

"8. Even though learned standing counsel appearing for the Revenue submitted that the judgment in the assessee's own case reported in AIT-2011-358- HC (The Commissioner of Central Excise V. M/s.India Cements Limited) had been appealed 5 against, as of today, there are no details; in any event, the fact herein is that the Revenue does not controvert the facts found by the Assistant Commissioner that the impugned goods were used for fabrication of structurals to support various machines like crusher, kiln, hoppers, pre-heaters conveyor system etc. and that without these structurals, the machinery could not be erected and would not function.

9. In the decision reported in AIT-2011-358-HC (The Commissioner of Central Excise V. M/s.India Cements Limited), pointing out to Rule 57Q and the interpretation placed by the Apex Court in the decision reported in 2010 (255) E.L.T.481 (Commissioner of Central Excise Jaipur V. Rajasthan Spinning & Weaving Mills Ltd.) and in particular Paragraph Nos.12 and 13, wherein the Apex Court had applied the user test by following the Jawahar Mills's case, this Court held that steel plates and M.S.Channels used in the fabrication of chimney would fall within the ambit of "capital goods". In the face of this decision in the assessee's own case there being no new circumstance or decision in favour of the Revenue, we do not find any good ground to take a different view herein too.

10. As far as the reliance placed by the Revenue on the decision reported in 2011(270) E.L.T.465 (SC) (Saraswati Sugar Mills V. Commissioner of C.Ex., Delhi-III) is concerned, we do not think that the said 6 decision would be of any assistance to the Revenue, considering the factual finding by the Tribunal therein in the decided case that the machineries purchased by the assessee were machineries themselves. Thus, after referring to the decision reported in 2010 (255) E.L.T.481 (Commissioner of Central Excise Jaipur V.

Rajasthan Spinning & Weaving Mills Ltd.), the Apex Court held that in view of the findings rendered by the Tribunal that the machineries were complete and having regard to the meaning of the expression "components/parts", with reference to the particular industry in question, the Apex Court rejected the appeal filed by the assessee.

11. Thus going by the factual finding, which are distinguishable from the facts found by the Authorities below in the case on hand, we have no hesitation in rejecting the Revenue's appeal, thereby confirming the order of the Tribunal.

12. Learned standing counsel appearing for the Revenue pointed out that the Tribunal had merely passed a cryptic order by referring to the earlier decisions. We do not think that this would in any manner prejudice the case of the Revenue, given the fact that on the identical set of facts, the assessee's own case was considered by this Court and by following the decision reported in 2010 (255) E.L.T.481 (Commissioner of Central Excise Jaipur V. Rajasthan Spinning & Weaving Mills Ltd.) , the Revenue's appeal was also rejected. In the circumstances, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, C.M.P. No.16107 of 2005 is also dismissed."

3. He further submitted that in C.M.A.Nos.3270 to 3272 of 2010, challenging the final order Nos.807, 522 and 808 of 2010, dated 23.07.2010, 07.05.2010, and 23.07.2010, passed by the CESTAT, Chennai, after hearing the learned counsel for the appellant therein and taking note of the decision of this Court in C.M.A.No.1301 of 2005, dated 31.12.2012, a Hon'ble Division Bench of this Court, vide order, dated 03.07.2015, allowed the above appeals filed by the assessee. He fairly submitted that the abovesaid decision would squarely apply to the facts of this case. Paragraphs 9 and 10 of the common order, dated 03.07.2015, is extracted hereunder: सतयमेव जयते

"9. From a perusal of the above said judgment, it is seen that there is no change in the circumstance and this Court had already considered the issue and held that the decision reported in 2011- TIOL-73-SC-CX (Saraswati Sugar Mills V. Commissioner of Central Excise, Delhi - III) in Civil Appeal No.5295 of 2003 dated 02.08.2011 is distinguishable on facts. This Court applied the principles laid down in the decision reported in 2010 (255) E.L.T.481 (Commissioner of Central Excise Jaipur V. Rajasthan Spinning & Weaving Mills Ltd.) and held in favour of the assessee.

10. Hence, following the principles laid down in the decision reported in 2010 (255) E.L.T.481

(Commissioner of Central Excise Jaipur V. Rajasthan Spinning & Weaving Mills Ltd.) and the earlier decision of this Court in C.M.A.No.3101 of 2005 dated 13.12.2012, we are inclined to allow the appeal, thereby set aside the order of the Tribunal. Accordingly, the above Civil Miscellaneous Appeals stand allowed."

4. Record of proceedings shows that at the time, when the delay in filing was condoned, vide C.M.P.No.7574 of 2006, dated 20.07.2017, Mr.V.Sundareswaran, learned counsel for the appellant fairly submitted that the issue involved in this appeal is answered against the revenue.

5. In the light of the above decisions of this Court and placing on record, the submission of the learned counsel for the appellant, the instant Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Customs Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
1st Floor, Shastri Bhavan Annexe,
Haddows Road, Chennai 600 006.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.52440

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C.M.A.No.2223 of 2017

LRS (CO)
CA(07/09/2017)

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