IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 4/9/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.2612 of 2017

M/s. Sri Sukra Spinning Mills P Ltd
S.F.No.185/3 Kumakalipalayam
Perundurai RS Post
Salem District. ...Appellant

Vs

The Commissioner of Central Excise
Foulks Compound
Anai Road
Salem 636 001. ...Respondent

Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, 1994, to set aside the Final Order No.42380 of 2016 dated 21/11/2016 passed by the Customs Excise and Service Tax Appellate Tribunal, Chennai in E/767/2006 DB.

For Appellant ... Mr.K.Jayachandran

For respondent ... Mr.V.Sundareswaran

J U D G M E N T

(Judgment of the Court was made by S.MANIKUMAR, J)

Instant appeal has been filed, challenging the Final Order, dated 21/11/2016, on the file of the CESTAT, Chennai.

2. Short facts leading to the appeal are as follows:-

The appellant is engaged in the manufacture of cotton yarn on cheese and hanks. On 16/11/1998, there was an inspection by the officials of the Central Excise Department, in the factory premises of the appellant. During search, the Officers recovered one “Broker's Commission file” found, in the factory of the appellant.

3. Show cause notice, in C.No.V/52/15/77/99-Cx.Adj, dated 3/4/2000, was issued to the appellant, demanding duty and proposing for imposition of penalty, and demand of interest.

4.The appellant rebutted the allegations with documentary evidence and established that the statements alleged to have voluntarily given by the respective deponents do not have any evidentiary value. But without appreciating the merits of the case, the adjudicating authority demanded a duty of Rs.10,23,983/-, with interest and imposed equal penalty.

5. Aggrieved against the same, an appeal has been filed before the Commissioner of Central Excise (Appeals), Salem, on the following grounds:-

(i). Goods were seized by the Investigating Officers in their presence.

(ii). The appellant was not given the copy of the broker commission file, containing the particulars for the year 1997 -98.

(iii). No evidence was let in, for the procurement of raw materials, transport of illicit removals of the cotton yarn and for consumption of electricity for the manufacture of cotton yarn, alleged to have been cleared without payment of duty.

6. On 7/6/2006, the Commissioner (Appeals) rejected the appeal by upholding the impugned order of the lower Authority. Against the said order, further appeal was filed to the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai, and that the same is dismissed, as devoid of merit.

7. Assailing the correctness of the Final Order No.42380 of 2016, dated 21/11/2016, instant Civil Miscellaneous Appeal is filed on the following substantial questions of law have been framed:-

> "a. Whether the entries in the private record, namely, "Broker's Commission file" can be made the basis for upholding the charge of clandestine removal of goods in the absence of corroborative evidences, such as, stock difference, purchase of raw materials without invoice, seizure of unaccounted finished goods while transporting, etc?
>
> b. Whether in the facts and circumstances of the case, abatement of duty element, such as, cum-duty benefit is permissible?
>
> c. Whether the Tribunal is right in rejecting the appeal without considering the various grounds raised by the appellant in the grounds of appeal before the Tribunal?

8. Supporting the prayer sought for, Mr.K.Jayachandran, learned counsel for the appellant submitted that private records have no evidentiary value and the offence of clandestine removal has not been proved beyond doubt. Therefore, the entire demand is based on mere assumptions and presumptions without a concrete proof to substantiate the same. He further submitted that the authorities below brushed aside the retraction on the ground that the same had been sent by "certificate of posting".

9. We heard Mr.V.Sundareswaran, learned counsel for the respondent.

10. Though the learned counsel for the revenue made submissions, justifying the final order impugned, when attention was invited to para 4.2, Mr.V.Sundareswaran, learned counsel for the revenue fairly submitted that issues raised before CESTAT, Madras have not been properly adverted, as required.

11. In this context, we also deem it fit to consider a decision of the Hon'ble Supreme Court.

(i) The Hon'ble Apex Court in HVPNL v. Mahavir reported in (2004) 10 SCC 86, while dealing with an order passed by the State Consumer Disputes Redressal Commission, held that the appellate forum is bound to refer to the pleadings of the case, submissions of the counsel, necessary points for consideration, discuss the evidence, and then to dispose of the matter by giving valid reasons.

(ii) In Tata Engineering & Locomotice Co. Ltd., v. Collector of Central Excise, Pune reported in 2006 (203) ELT 360 (SC), the Hon'ble Supreme Court, deat with a case, whereby, a cryptic and non-speaking order, the Tribunal upheld the order passed by the Commissioner, by applying the ratio of the decision of a Larger Bench in TISCO Ltd., v. CCE, Madras [2000 (118) ELT 104 (T-LB)], without recording any findings of fact. On the facts and circumstances of the case, the Hon'ble Apex Court, while holding that it is not sufficient in a judgment, to give conclusions alone, but it is necessary to give reasons, in support of the conclusions arrived at, set aside the order of the Tribunal, holding that the findings recorded by the Tribunal therein, were cryptic and non-speaking, and remitted the matter to the Tribunal for taking a fresh decision, by a speaking order, in accordance with law, after affording due opportunity to both the parties.

(iii) In Commr. of Central Excise, Bangalore-II v. Fitwel Tools & Forgings (P) Ltd., reported in 2010 (256) ELT 212 (Kar.), a Hon'ble Division Bench of Karnataka High Court, at Paragraph 5, held as follows:

"After careful perusal of the order impugned, it is manifest on the face of the order that the Tribunal has committed a grave error in passing the order impugned without assigning any valid reasons and without any discussion. By merely following the order passed in similar matters, it has proceeded to pass the impugned order, allowing the appeal filed by the respondent. Hence, we are of the opinion that the impugned order is cryptic in nature and such a non-speaking order cannot be sustained."

12. In the light of the above submissions and decisions, we have no hesitation, to set aside the Final order dated 21/11/2016, made in Final Order No.42380/2016.

13. On the facts and circumstances of the case, this Civil Miscellaneous Appeal is allowed. The matter is remitted to the CESTAT, with a direction to consider the pleadings, grounds of appeal raised and pass orders, in accordance with law, by not later than four weeks, from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mvs.

To

The Commissioner of Central Excise
Foulks Compound
Anai Road, Salem 636 001.

+ 1 cc to Mr.V. Sundareswaran, Advocate Sr.63737
+ 1 cc to MR.K. Jeyachandran, Advocate SR.63600

C.M.A.No.2612 of 2017

NM(CO)
EU(13/10/2017)