IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8/11/2017

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE R.SURESH KUMAR

Civil Miscellaneous Appeal No.3111 of 2017

Commissioner of Central Excise &
Service Tax
6/7 ATD Street
Race Course Road
Coimbatore 641 018. ...Appellant

Vs

Sreerama Scaffoldings Pvt Ltd
Palakkad Main Road
Ettimadai (PO)
Coimbatore 642 105. ...Respondent

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the Final Order No.42008 of 2016, dated 14/10/2016, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For appellant ... Mr.A.P.Srinivas

For respondent ... Mr.J.Shankar Raman

J U D G M E N T
(Judgment of the Court was made by S.MANIKUMAR, J)

Final Order No.42008 of 2016, dated 14/10/2016, of the Customs, Excise and Service Tax Appellate Tribunal, Madras, is challenged in the instant Civil Miscellaneous Appeal, on the following substantial question of law:-

> "Whether the discharge of duty by the assessee through CENVAT Credit can be construed as a valid payment of duty, when Rule 8 (3A) of the Central Excise Rules, 2002, notwithstanding the CENVAT Credit Rules, 2004, specifically provides that the duty should be paid only in Account Current (PLA) if the assessee defaults in payment of duty beyond the time limit prescribed therein."

2. Material on record discloses that pursuant to the show cause notice No.4 of 2014, dated 6/3/2014, of the Assistant Commissioner of Central Excise, Service Tax & Customs, Coimbatore III Division, the adjudicating authority has passed the following orders:-

> "(i). I confiscate the goods cleared during the period from 8/3/2013 to 31/3/2013 and from 14/2013 to 10/4/2013 totally valued at Rs.36,54,535/- under Rule 25 of the Central Excise Rules, 2002.
>
> (ii). In terms of Section 34 of the Central Excise Act, 1944, I impose a fine of Rs.9,00,000/- (Rupees Nine lakhs only) in lieu of confiscation, since the goods have already been cleared.
>
> (iii). I confirm the demand of Rs.4,51,701/- (Rupees Four lakhs fifty one thousand seven hundred and one only) (ED Rs.4,38,544/- + ED Cess Rs.8,771/- + SHE Cess Rs.4,386/-) being the Central Excise duty involved on the goods cleared during the period from 8/3/2013 to 31/3/2013 & 1/4/2013 to 10/4/2013, under Section 11 A (1) of the Central Excise Act, 1944;
>
> (iv). I appropriate the amount of Rs.2,23,605/- (including cess) already paid through PLA account and the amount of Rs.2,28,096/- paid through TR.6 challan dt. 26/4/2013 towards the amount demanded under SI (iii) ibid;
>
> (v). I demand interest amount of Rs.6,097/- for delayed payment on Central Excise duty in respect of clearances made during 8/3/2013 to 10/4/2013.
>
> (vi). I appropriate the amount of Rs.6,097/- (Rupees Six thousand and ninety seven only) being the interest already paid through Challan No.10 dated 26/4/2013 towards the interest liability demanded above under S.No.(iv) ibid.
>
> (vii). I impose a penalty of Rs.2,25,000/- (Rupees two lakhs and twenty five thousand only) on them under Rule 25 of the Central Excise Rules, 2002 for contravening the provisions of sub-Rule 1, 3 & (3A0 of Rule 8 of the Central Excise Rules, 2002.
>
> (viii). I impose a penalty of Rs.5,000/- (Rupees five thousand only) on them under Rule 27 of the Central Excise Rules, 2002 for delayed filing of ER.1 returns."

3. Sreerama Scaffoldings Pvt Ltd/assessee/respondent herein has filed an Appeal No.31 of 2015-CEX, before the Commissioner of Customs, Central Excise and Service Tax (Appeals - I), Coimbatore. After considering the material on record, arguments and taking note of the judgment of the Hon'ble Gujarat High Court in Indsur Global Ltd Vs. Union of India {2014 (31) ELT 833 Guj}, striking down Rule 8 (3-A) of the Central Excise Rules, 2002, as ultra vires of the Constitution of India and other decisions relied on by the assessee, vide order, made in Appeal No.31/2015-CEX, allowed the appeal, with all consequential benefits. Commissioner of Customs, Central Excise & Service Tax (Appeals - I), Coimbatore, set aside the order of the adjudicating authority, dated 30/1/2015.

4. Being aggrieved, Commissioner of Central Excise and Service Tax, Coimbatore, preferred an appeal to the CESTAT, Chennai. Following the decision of the Madras High Court in Malladi Drugs & Pharmaceuticals Ltd., Vs. Union of India & CCE, Chennai III, reported in {2015 (323) ELT 489 (Mad), CESTAT, vide order, dated 14/10/2016, CESTAT, Chennai, dismissed the appeal filed by the Commissioner of Central Excise and Service Tax (Appeals - I), Coimbatore, as hereunder:-

> "While Revenue supports the adjudication order, learned counsel opposes the same on the ground that there is no ground to issue the show-cause notice and if show-cause notice is considered good, there is no case for Revenue under Section 8 (3A), which was struck down by the Hon'ble Madras High Court in the case of Malladi Drugs & Pharmaceuticals Ltd., Vs. Union of India reported in 2015 (323) ELT 489 (Mad).
>
> 2. Proposition of the respondent appears to be sound as is apparent from the adjudication order not questioning its conduct. Deposited amount has been appropriated in adjudication and Hon'ble High Court of Madras has struck down the rule. Therefore, Revenue appeal is dismissed.
>
> 3. In view of the disposal of the appeal as above, cross objection stands disposed."

5. Though order of CESTAT, Madras, extracted supra, is impugned in the instant Civil Miscellaneous Appeal, on the above said substantial question of law, when the matter came up for hearing, both the learned counsel appearing for the parties submitted that duty and interest levied, have been paid. Both the learned counsel for the parties further submitted that both the judgments of Gujarat High Court in

Indsur Global Ltd Vs. Union of India {2014 (31) ELT 833 Guj}, and the judgment of Madras High Court in Malladi Drugs & Pharmaceuticals Ltd., Vs. Union of India & CCE, Chennai III, reported in {2015 (323) ELT 489 (Mad), have been stayed.

6. Mr.J.Shankar Raman, learned counsel for the respondent submitted that levy of duty and interest paid would not be agitated.

7. Submission of the learned counsel for the respondent is placed on record.

8. Material on record discloses that apart from duty and interest, a sum of Rs.9 lakhs has been ordered to be paid towards redemption penalty. A sum of Rs.2,23,605/- (including cess) has been ordered as penalty under Rule 25 of the Central Excise Rules and Rs.5,000/- under Rule 27 of the Central Excise Rules, for the delayed payment of Central Excise duty. Considering the monetary policy of the Government, Mr.J.Shankar Raman, learned counsel for the respondent/assessee submitted that the substantial questions of law raised in the instant Civil Miscellaneous Appeal, need not be adjudged and that they be left open.

9. Instruction of the Ministry of Finance, Department of Revenue Central Board of Excise & Customs, New Delhi, dated 30/12/2016, in F.No.390/Misc./163/2010-JC/Pt, is extracted hereunder:-

F.No.390/Misc./163/2010-JC/Pt

Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi, 30th December, 2016

INSTRUCTION

To

1. All Principal Chief Commissioners/ Chief Commissioners and Directors General under the Central Board of Excise and Customs.
2. Chief Commissioner (AR), All Commissioners (AR), Customs, Excise & Service Tax Appellate Tribunal.
3. All Principal Commissioners / Commissioners of Customs / Central Excise / Service Tax / Commissioner, Directorate of Legal Affairs.
4. cbec@icegate.gove.in

Sir/Madam,

Sub: - Reduction of Government litigation - providing monetary limits for filing appeals by the Department before CESTAT - regarding.

In exercise of the powers conferred by Section 35R of the Central Excise Act, 1944 made applicable to Service Tax vide Section 83 of the Finance Act, 1994 and Section 131 BA of the Customs Act, 1962 and in partial modification of earlier instruction issued from F.No.390/Misc./163/2010-JC dated 17.12.2015, Central Board of Excise & Customs fixes the monetary limit below which appeal shall not be filed in the High Court as Rs.20,00,000/-.

2. Except for the above all other terms and conditions of earlier instructions dated 17.8.2011 & 17.12.2015 stands.

(Anuj Agarwal)
Officer in Special Duty-Judicial Cell

10. Penalty imposed in the case on hand, is within the monetary limit. In the light of the policy decision, we are of the view that there is no need for adjudication of the substantial question of law raised in the instant Civil Miscellaneous Appeal. Leaving it open for adjudication in appropriate cases, instant Civil Miscellaneous Appeal is disposed of. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mvs.

To

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

2. The Commissioner of Central Excise & Service Tax, 6/7, ATD Street Race Course Road, Coimbatore.

+ 1 cc to Mr. A.P. Srinivas, Advocate SR.79655

Civil Miscellaneous Appeal No.3111 of 2017

EU(07/12/2017)