IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

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

CMA No.3019 of 2017

M/s.Nandhi Spinning Mills (P) Limited,
Rep. by its Director,
Mr.N.Santhakumar ... Appellant

vs.

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

Civil Miscellaneous Appeal filed under Section 35G(2) of the Central Excise Act, 1944) praying to set aside the impugned Final Order No.40386/2017 dated 01.03.2017 in Appeal No.E/112/2006-DB passed by the Hon'ble CESTAT, Chennai and allow this appeal with consequential relief.

For Appellant : Mr.C.Saravanan

For Respondent : Mr.V.Sundareswaran
CGSC

JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J)

Though Final Order made in No.40386 of 2017 dated 01.03.2017 on the file of CESTAT, Chennai, is challenged on many substantial questions of law, we are not inclined to delve into the same. But, going through the order, we are of the view that after extracting the submissions, CESTAT, Chennai, dismissed the appeal, by a non speaking order. At paragraph Nos.3 and 4, the tribunal ordered as hereunder.

> "3. When the appellate Commissioner found that there was falsification of records and appellant has no material to discard the allegation of Revenue, he held that there was clandestine clearance of the goods and there was neither any job working done nor any job worked goods cleared. We are not able to find any material from the grounds of appeal of the appellant to

disturb such finding of the ld. Commissioner (Appeals). Accordingly, appeal is dismissed.

4. While deciding the above appeal, we are guided by the judgment of the Hon'ble Punjab and Haryana High Court in the case of CCE Chandigarh Vs. Modern Alloys - 2010 (285) ELT 364 (P&H) and the judgment of Hon'ble High Court of Madras in the case of Alagappa Cements Pvt. Ltd. Vs. CEGAT, Chennai - 2010 (260) ELT 511 (Mad.). We are also conscious that any grant of relief to the evader shall be a bonus to him following the judgment of the Hon'ble High Court of Himachal Pradesh in the case of CCE Vs. International Cylinders Pvt. Ltd. - 2010 (255) ELT 68 (H.P.)."

2. The tribunal is a final fact finding authority. Though the tribunal has considered the grounds of appeal, there is no discussion. Further, by relying on the decision of Punjab and Haryana High Court in the case of CCE Chandigarh Vs. Modern Alloys - 2010 (285) ELT 364 (P&H), tribunal dismissed the appeal, which cannot be approved in the light of the decision of the Hon'ble Supreme Court in Tata Engineering & Locomotive Co. Ltd., v. Collector of Central Excise, Pune reported in 2006 (203) ELT 360 (SC).

3. At this juncture, we deem it fit to consider few decisions, on this aspect.

(i) In HVPNL v. Mahavir reported in (2004) 10 SCC 86, while dealing with an order passed by the State Consumer Disputes Redressal Commission, the Hon'ble Apex Court 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 & Locomotive Co. Ltd., v. Collector of Central Excise, Pune reported in 2006 (203) ELT 360 (SC), the Hon'ble Supreme Court, dealing 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."

4. In the light of the above discussion and decisions, the impugned order is set aside and the matter is remitted to CESTAT, Chennai. CESTAT, Chennai is directed to issue notice to both parties, provide opportunity, consider the issues raised in the appeal and pass orders on the appeal on merits and in accordance with law. Tribunal is further directed to dispose of the appeal, as expeditiously as possible within a period of two months from the date of receipt of a copy of this order.

5. Civil Miscellaneous Appeal is allowed, as indicated above. No Costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

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

+ 1 cc to Mr.C.Saravanan, Advocate,SR.79190
+ 1 cc to Mr.V.Sundareswaran Advocate,SR.79172

CMA No.3019 of 2017

RK(CO)
NR 09/11/2017