IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

The Hon'ble Sri Justice V.RAMASUBRAMANIAN
and
The Hon'ble Sri Justice ABHINAND KUMAR SHAVILI

C.E.A. No.83 OF 2017

Between:

Electronics Corporation of India Limited,
Cherlapally, Hyderaba – 500 062,
Represented by Deputy General Manager – Taxation Cell

...Appellant

Vs.

Commissioner of Central Excise,
Customs and Service Tax,
Hyderabad – III Commissionerate,
Central Ecise Building, L.B. Stadium Road,
Basheerbagh, Hyderabad – 500 004

...Respondent

For Appellant : Sri C.V. Narasimham

For Respondent : Smt. Sundari R Pisupati

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

C.E.A. No.83 OF 2017

JUDGMENT: *(per V. Ramasubramanian, J)*

The Assessee has come up with the above appeal under Section 35G of the Central Excise Act, 1944.

2. Heard Mr. C.V.Narasimham, learned counsel for the appellant and Ms.Sundari R. Pisupati, learned Senior Standing Counsel for the respondent.

3. The appellant is a Government of India enterprise, coming under the control of the Department of Atomic Energy. During a test check of the records of the appellant company, the Central Excise authorities allegedly found that there were discrepancies in the matter of production of computers. Therefore, a show cause notice was issued way back on 19.11.1998 alleging that 504 personal computers were cleared without payment of duty.

4. This show cause notice resulted in an order-in-original dated 27.02.2006. As against the said order-in-original, the appellant filed an appeal before the Central Excise and Service Tax Appellate Tribunal (CESTAT). Before the CESTAT, it was contended by the appellant that they had records to explain the discrepancies. But the Tribunal upheld the demand in so far as this discrepancy is concerned, though the Tribunal allowed the appeal with regard to certain other aspects. We are not now concerned with the aspects on which the appellant succeeded before the Tribunal.

5. Aggrieved by the confirmation of the demand in respect of the discrepancies with respect to the production of 504 personal computers

and also aggrieved by the rejection of the claim of the appellant with regard to payment of differential duty on the computers supplied to the Department of Telecommunications, the appellant has come up with the above appeal raising the following substantial questions of law:

1. Whether on the facts and in circumstances of the case the order of the Tribunal is perverse and based on irrelevant material and mere surmise to confirm alleged clearance of 504 computers without payment of duty and the Tribunal erred in not grating reasonable opportunity to examine relevant material by remand to adjudicating authority?

2. Whether the Tribunal was correct in refusing to direct the Department to verify RG.1 record (Daily Stock Account) of CMG Division and clearance of computers from CMG Division when there was no evidence of clearances without payment of duty? And

3. Whether the Tribunal was correct in refusing to consider the appellant's request for directing the department to verify the payment of differential duty and given an opportunity to the appellant to produce the record of payment since it was acknowledged by the Superintendent of Central Excises?

6. The original dispute related to the period from 1988-2004. But the dispute now is confined only to the period 1995 to 1997. The only grievance of the appellant is that the records maintained by them in the ordinary course of business, could not be produced before the Adjudicating Officer as well as the Tribunal. Before the Tribunal, the appellant claimed that they had the records but the Tribunal found fault with the appellant for not producing the records, before the Tribunal. The appellant, as we have stated earlier, is a Government of India enterprise coming under the control of the Department of Atomic Energy. Therefore, the Tribunal ought to have given an opportunity to the appellant to produce the records before the original adjudicating

authority. Therefore, the third question of law is answered in favour of the appellant.

7. Coming to the first and second questions of law, it is seen from the original order as well as the order passed in appeal on the finding that there was clearance without payment of duty, was not based upon concrete material. Invoices are now produced. If these records had been produced before the Adjudicating Officer, probably the Adjudicating Officer could not have come to the conclusion that he did. Therefore, the questions of law 1 and 2 are also answered in favour of the appellant.

8. As a result, the appeal is allowed, the impugned order is set aside in so far as the same relates to the rejection of the claim of the appellant and the matter is remanded back to the Adjudicating Officer for a fresh consideration. The Adjudicating Officer shall fix a date for personal hearing and inform the appellant the date so fixed, the representative of the appellant shall appear and produce the records and thereafter, the Adjudicating Officer may pass orders afresh.

9. As a sequel thereto, miscellaneous petitions, if any, pending shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

ABHINAND KUMAR SHAVILI, J

October 26, 2017

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