

In the High Court of Judicature at Madras

Dated : 14.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1513 of 2017

The Commissioner of Central Excise,
Salem. ...Appellant/Respondent

Vs

M/s.JSW Steel Ltd., Mettur,
Salem District. ...Respondent/Appellant

APPEAL under Section 35G of the Central Excise Act, 1944 against Final Order No.40556 of 2015 dated 11.5.2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Appeal No.E/40256/2014.

For Appellant : Mr.V.Sundareswaran

For Respondent: Mr.Raghavan Ramabhadhran
for Ms.Lakshmi Kumaran

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue is directed against the final order passed by the Customs, Excise and Service Tax Appellate Tribunal dated 11.5.2015 in final order No 40556/2015.

2. The appeal was admitted on 27.7.2017 on the following substantial questions of law :

"i. Whether the Tribunal was correct in allowing the appeal based on the amendment to Rule 6 of the CENVAT Credit Rules, 2004, read with Section 73 of the Finance Act, 1994, which is applicable for the specific period i.e., from 10.9.2004 to 31.3.2008 only ?

ii. Whether the Tribunal committed an error in extending the said amendment to

Rule 6 of the CENVAT Credit Rules, 2004 read with Section 73 of the Finance Act, 1994 as applicable for the present period of dispute namely from 7/2008 to 02/2011? and

iii. Whether the Tribunal was justified in merely following its own order without appreciating the facts and period in dispute and the amendment made to the CENVAT Credit Rules, 2004?"

3. We have heard the learned Senior Standing Counsel for the Revenue and the learned counsel appearing on behalf of the respondent.

4. The short issue, which falls for consideration, is as to whether the Tribunal was right in following its earlier decision in the case of Burn Standard Co. Ltd. Vs. CCE, Salem [reported in (2010) 262 ELT 786 (Tri.- Chenn.)], which was affirmed by the Hon'ble Division Bench of this Court in the case of CCE, Salem Vs. Burn Standard Co. Ltd. [reported in (2013) 295 ELT 671]. Secondly, the question as to whether the Tribunal made an exercise to ascertain the factual position, as to whether the contention of the assessee that they exercised option under Rule 6(3A) of the CENVAT Credit Rules, 2004 vide their letter dated 20.7.2009 for exempted goods i.e. Electricity, will hold good for exempted product namely metallurgical coke and as to whether such a letter will hold good for the clearance effected by the respondent - assessee from July 2008, have to be gone into.

5. The Revenue contended before the Tribunal that the assessee failed to reverse the CENVAT credit used in the manufacture of exempted goods i.e. metallurgical coke every month and for the period from July 2008 to February 2011, they reversed CENVAT credit only on 05.12.2011, that too, only after the Department started verifying this aspect, which, according to the Department, is not in accordance with Rule 6(3) of the CENVAT Credit Rules, 2004. Therefore, the Revenue further contended that the assessee has not given any letter exercising their option to reverse the CENVAT credit in terms of Sub-Rule (3A) of Rule 6 of the said Rules for the exempted goods.

6. The learned Senior Standing Counsel appearing for the Revenue points out that the decision in the case of Burn Standard Co. Ltd., is not applicable to the instant case, as, in the said case, the effect of the amendment to Rule 6 under Section 73 of the Finance Act, 2010, was the subject matter of consideration and the Hon'ble Division Bench specifically noted that the period of effect of amendment is from 10.9.2004 to 31.3.2008 (both days inclusive).

7. It is not disputed by the learned counsel for the assessee that the period in question in the instant case is between July 2008 and February 2011.

8. Therefore, the decision in the case of Burn Standard Co. Ltd., could not have been applied to the facts of the case on hand and to that extent, the Tribunal committed an error.

9. With regard to the factual aspect as pointed out by the learned Senior Standing Counsel for the Revenue, both before the Tribunal as well as before us, we find that there has been no adjudication done by the Tribunal on the said aspect. This is crucial to ascertain the conduct of the assessee in the background of the facts as pointed out by the Revenue. Therefore, we are of the considered view that the case has to be remanded to the Tribunal for a fresh consideration to decide the factual issue, which has been raised by the Revenue, both before the Tribunal as well as before us.

10. It is reiterated that the decision in the case of Burn Standard Co. Ltd., cannot be applied to the facts of this case and that the Tribunal, on remand, is directed to adjudicate the factual aspect as raised by the Revenue in this appeal.

11. For the above reasons, the above civil miscellaneous appeal is allowed, the impugned order passed by the Tribunal is set aside and the matter is remanded to the Tribunal for a fresh consideration in terms of the observations made by us in this judgment. No costs.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

RS

To

The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench No.26, Sastri Bhavan Annexe Building, I Floor, Haddows Road, Chennai-6.

+1cc to Mr. Sundareswarn, Advocate, S.R.No. 56003

+1cc to Mr. Lakshmi Kumaran, Advocate, S.R.No. 55999

CMA.No.1513 of 2017

MG(CO)
GN(17/09/2018)