IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20/3/2018
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.701 of 2018

The Commissioner of Central Excise
O/o. The Commissioner of Central Excise
Customs & Service Tax
6/7 A.T.D.Street
Race Course Road
Coimbatore 641 018. ...Appellant/Respondent

vs

M/s. Southern Press Tools
No.1056/C, U.R.House
Avinashi Road
Coimbatore 641 018. ...Respondent /Appellant

Civil Miscellaneous Appeal filed under Section 35 G of the Central Excise Act, 1994, against the Final Order No.41762-41763/2016, dated 29/9/2016 passed by the CESTAT, South Zone Bench, Chennai arising out of order in Original No.02/2003, dated 07.05.2003 passed by the Commissioner of Central Excise (Appeals) Coimbatore.

For Petitioner : Mr.A.P.Srinivas
Standing Counsel for Central Excise.

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J U D G M E N T

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

Instant Civil Miscellaneous Appeal is filed against the order of the CESTAT, South Zone Bench, Chennai, dated 29/9/2016, made in Final Order No.4176/2016.

2. Short facts leading to the filing of the appeal are that the respondent, Southern Press Tools, Malumichampatti, Coimbatore, are the manufacturers of tools, dies, jigs and fixtures and sheet metal components. Officers of HPU visited another premises of Southern Press Tools and found that they were manufacturing branded radiators of M/s. Universal Radiators Ltd and T72 Cooling system and also found that no accounts were maintained and the goods were cleared without payment of duty to M/s.Universal Radiators Ltd., after manufacturing. Though the

components and raw materials utilized for the above manufacturing activities were received by M/s. Southern Press Tools directly from the suppliers, an impression was created by means of fraudulent records that the same were supplied by M/s. Universal Radiators Ltd to M/s. Southern Press Tools.

3. After due process of investigation, SCN was issued to M/s. Southern Press Tools and Universal Radiators Ltd, demanding Rs.52,69,414/- for the period 1/9/1992 to 13/8/1996, under proviso to Section 11 A (1), invoking extended period of demand and proposing to confiscate the seized goods, valuing Rs.9,71,771/-, from the premise of M/s. Southern Press Tools and further proposing to impose penalties upon M/s.Southern Press Tools, under Rules 9 (2), 173 Q and 226 of CER, 1944, r/w. Section 11 AC of CEA, 1944. Penalty under Rule 209 A was also proposed to impose upon M/s. Universal Radiators Ltd., for abetting the offence.

4. The demand and confiscation was confirmed and a penalty of Rs.52,69,414/- was imposed upon M/s. Southern Press Tools, under Rules 9 (2), 173 Q, 226 of CER, 1944 and Section 11 AC and Rs.5 lakhs upon M/s. Universal Radiators Ltd., under Rule 209 A of CER, 1944, vide Order-in-Original No.40/97 (Commissioner), dated 24/9/1997.

5. Aggrieved by the Order, dated 24/9/1997, the assessee preferred an appeal, before the Hon'ble Customs, Excise and Service Tax Appellate Tribunal. Vide Order, dated 23/8/2002, in Order Nos.930 and 931 of 2002, held that there was a clandestine removal and suppression of facts, on the part of the appellant and remanded the case to the Commissioner, for considering the above grounds, on merits and re-quantify the duty accordingly. The Commissioner of Central Excise, after due process of law, vide order-in-Original No.02/2003, dated 7/5/2003, confirmed the duty and penalty.

6. Aggrieved by the said order, Universal Radiators Ltd., and Southern Press Tools, have again approached the Tribunal, on the ground that the findings of the adjudicating authority were not sustainable. The Tribunal, vide Final Order Nos.1067 and 1068 of 2007, dated 29/8/2007, allowed the appeals.

7. During the review of the abovesaid order, the department felt that the same is not legal and proper, and liable to be quashed by the Hon'ble Supreme Court, under the powers vested upon it, under Section 35 L of the Central Excise Act. The Hon'ble Supreme Court, vide order, dated 10/8/2011, in Civil Appeal Nos.2878-2879 of 2008, allowed the appeals filed by the department, ordered, to decide the issue, in accordance with law, laid down by the Hon'ble Supreme Court, in the case of Commissioner of Central Excise, New Delhi Vs. Harichand Sri

Gopal and Others.

8. Southern Press Tools filed an appeal to the High Court, challenging the Final Order No.1068/07, dated 28/9/2007, passed by the CESTAT, Chennai. Taking note of the remand order of the Supreme Court, on the department appeal, High Court, in its Final Order, dated 19/12/2014, in C.M.A.No.2230 of 2008, held that the plea made by the appellant/dealer can be agitated before the Tribunal and directed the Tribunal to go into the issue raised by the appellant/dealer on the plea of confiscation of goods as well. In effect, the Civil Miscellaneous Appeal was allowed by way of remand to the Tribunal.

9. Tribunal, vide Final order Nos.41762-41763 of 2016 dated 29/9/2016 held that there was no factory, no manufacturing activity by the appellant and consequently, allowed the appeal filed by the appellant/dealer. Aggrieved against the same, the appellant has preferred the instant Civil Miscellaneous Appeal, on the following grounds.

(i). There was no factory and no manufacturing activity, especially when the Tribunal, vide its Order Nos.930 and 931 of 2022, dated 23/8/2002, in an earlier round of litigation had upheld the findings of clandestine manufacture and removal of excisable goods by M/s. Southern Press Tools. The registration certificate was issued wayback in 1972 under the provisions of the erstwhile Central Excise Rules, 1944 which clearly evidences the existence of the factory at the aforesaid premises. The said certificate has not been surrendered till date.

(ii). It is a well settled position in law that admitted facts need not be proved which is laid down in the decision of the Madras High Court in the case of Assistant Collector of Customs Vs. Govindasamy Raghupathy {1998 (98) ELT 50 (Mad.)}. Statements recorded under Section 14 of the Central Excise Act, 1944 is a valid piece of evidence under Section 25 of the Evidence Act as held by the Hon'ble Apex Court, in the case of Romesh Chandra Mehta Vs. State of West Bengal {1970 AIR 1940}. When such inculpatory statement is given by the authorised signatories of both the units, order passed by the CESTAT, ignoring the abovesaid statement is not correct and sustainable as per law. Therefore, CESTAT has erred in holding that there was no factory and no manufacturing activity.

10. Heard Mr.A.P.Srinivas for the Central Excise and gone through the material available on record.

11. On both occasions, at the first stage, as well as on remand, accepting the contention of the assessee M/s. Southern Press Tools, Coimbatore, the Tribunal has arrived at a

categorical finding that there is no manufacturing activity and accordingly, allowed the appeals filed by the dealers.

12. Finding of fact arrived at by the Tribunal cannot be said to be perverse warranting any interference. There is no questions of law involved much less the substantial questions of law. Civil Miscellaneous Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mvs
To

1.The CESTAT, South Zone Bench, Chennai.

2.The Commissioner of Central Excise
O/o.The Commissioner of Central Excise customs
and Service Tax 6/7 ATD street, Race Course Road
Coimbatore 641 018

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