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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CENTRAL EXCISE APPEAL NO.259 OF 2007

The Commissioner, Central Excise, Pune III, Pune ...Appellant
vs.
M/s.Ispat Profiles India Ltd. ...Respondent

Mr.Swapnil Bangur I/b Mr.Ram Ochani for the appellant

CORAM : A.S.OKA, &
M.S.SANKLECHA,JJ.
DATE : APRIL 4, 2019

P.C.:

1 This appeal under section 35-G of the Central Excise Act,1944 challenges the order dated 9th April 2007 passed by the Customs, Excise and Service Tax Appellate Tribunal, West Zonal Bench, Mumbai (for short `CESTAT').

2 On 30th July 2008 this Appeal was admitted on the following substantial question of law:

> "Whether the CESTAT is legally justified in holding that the case of the respondent is squarely covered by the decision of the CESTAT in the case of M/s.Sunrise Structural and Engineering Ltd. & others vs. C.C.E Nagpur reported in 2004 (117) ECR 307 (T) when the facts in the case are otherwise ?

3 As is evident from the questions of law, the appeal of the respondent before the Tribunal was allowed by following the decision of its co-ordinate Bench in the case of M/s.Sunrise Structural and Engineering Ltd. V/s.C.C.E. Nagpur[1]. The pure legal issue which arose for consideration in the case of M/s.Sunrise Structural and Engineering Ltd. (supra) was whether the proceeding relating to breaches committed under the erstwhile Modvat Credit Rules could be continued/initiated after its withdrawal and substitution by new Rules. The Tribunal has in M/s.Sunrise Structural and Engineering Limited (supra) had held in the negative. Therefore, in favour of the assessee and against the Revenue. The same legal issue arises in this case viz whether the proceedings already commenced and/or initiated after the substitution of the Rules under which the breaches were committed can continue.

4 The Revenue had filed an appeal from the decision of the Tribunal in the case of M/s.Sunrise Structural and Engineering Limited (supra) being Income Tax Appeal No.248 of 2017. On 22nd March 2019, we disposed of the above appeal whether answering this question, as it was in those facts, academic.

5 However, this Court had an occasion to deal with similar issue in case of the Commissioner of

1 2004 (117) ECR 307 (T)

Central Excise, Thane-II vs. M/s.Milton Polyplas (I) Pvt. Ltd and others (Central Excise Appeal No.142 of 2005 decided on 1st April 2019).

6 In the above case, the Tribunal had while allowing the assessee's appeal relied upon the decision of its Co-ordinate Bench (M/s.Sunrise Structural and Engineering Limited (supra). The Appeal of the Revenue in M/s.Milton Polyplas (I) Pvt. Ltd and others (supra) was allowed by us after relying upon the decisions of the Supreme Court in Fibre Boards Pvt.Ltd Vs. CIT 10 SCC 333 and Shree Bhagawati Steel Rolling Mills vs. CCE 326 ELT 209. We held that in view of section 38A of the Act (inserted in 2001 with retrospective effect from 1994) the proceedings relating to breaches committed under the erstwhile Rules would be saved and not abort. Thus, for the reasons indicated in our order dated 1st April 2019 in M/s.Milton Polyplas (I) Pvt. Ltd and others (supra), the substantial question has to be answered in the negative i.e in favour of the Revenue.

7 Thus, Appeal allowed.

(M.S.SANKLECHA,J.) (A.S.OKA,J.)