IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.647 of 2011
and
Miscellaneous Petition No.1 of 2011

M/s.Vairava Textiles Ltd.,
Senjeri Road, Pethappampatti,
Udumalpet Tk, Coimbatore District. .. Appellant/Appellant

-vs-

1.The Customs, Excise and Service Tax
Appellate Tribunal,
South Regional Bench,
Shastri Bhavan Annexe,
Haddows Road, Chennai. .. 1st Respondent

2.The Commissioner of Central Excise,
ATD Street, Race Course Road,
Coimbatore. .. 2nd Respondent/Respondent

Appeal under Section 35-G of the Central Excise Act, 1944 to set aside the order dated 21.06.2010 made in Final Order No.673/10 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.Jayachandran

For Respondents : Mr.P.Rajkumar Jhabakh,
Senior Standing Counsel

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JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal filed by the appellant/assessee is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for brevity “the Tribunal”), in Final Order No.673/2010, dated 21.06.2010, and has been admitted on 21.04.2011, on the following substantial questions of law:-

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"(i) Whether in the facts and circumstances of the case, the Tribunal is right in confirming the demand when the demand itself is barred by limitation?

(ii) Whether the Tribunal is right in holding that there was no such submission put forth in the appeal especially when the plea of limitation and correct availment of cenvat Credit on machinery parts pleaded in the appeal grounds.

(iii) Whether the Tribunal is right in holding that there was no dispute about the liability but quantum alone is disputed whereas it was raised in the grounds that the entire demand is barred by limitation and the value adopted on job-work yarn clearance is as per the decision of the Supreme Court reported in (1989) 3 SCC 488 – M/s.Ujagar Prints v. Union of India."

2.Heard Mr.Mudimannan, learned counsel, for Mr.K.Jayachandran, learned counsel for the appellant; and Mr.P.Rajkumar, learned Senior Standing Counsel for the respondent.

3.The order impugned before us is an order of remand passed by the Tribunal remanding the matter to the original authority for adjudication by confirming the order passed by the Commissioner (Appeals).

4.On a reading of the impugned order, we find that there is no manifest error in the order passed by the Tribunal in confirming the order passed by the Commissioner (Appeals). However, we find that the Tribunal while remanding the matter should have permitted the appellant/assessee to canvass the ground relating to limitation raised by the appellant before the Tribunal.

5.It is the specific case of the appellant/assessee that the entire demand is barred by limitation and therefore, the demand is not sustainable in law. However, the Tribunal did not make any such observation with regard to the limitation point while confirming the order passed by the Commissioner (Appeals). In fact, the assessee is to be partially blamed because, none appeared for the assessee before the Tribunal, when the case was heard. Therefore, we are of the view that the point relating to limitation being a mixed question of law and fact, should also to be allowed to be agitated by the assessee before the original authority.

6.The next issue is with regard to quantification in which there appears to be a dispute between the assessee and the

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Department. This has been remanded to the original authority for fresh consideration and we confirm such order of remand.

7.The third issue to be considered is whether the Commissioner (Appeals) was justified in remanding the matter to the original authority to consider the plea with regard to the claim of depreciation under Section 32 of the Act and whether credit can be denied for reasons of the depreciation. In fact, the Commissioner (Appeals) in the order dated 27.03.2007, has recorded the following finding:-

> "5(i).............. On perusal of the same, I find that the goods involved were only spares. Under these circumstances the question of claiming depreciation under Section 32 of the Act, 1961 does not arise and the credit cannot be denied for the reasons of depreciation."

8.Having recorded the above finding, it goes without saying that credit cannot be denied to the appellant/assessee. With regard to the other issues, the order passed by the Commissioner (Appeals), as confirmed by the Tribunal, is just and proper.

9.In the result, the appeal filed by the appellant/assessee is partly allowed, the impugned order of remand passed by the Tribunal is confirmed and the appellant/assessee is granted liberty to raise the points relating to limitation before the original authority which shall be adjudicated on merits and in accordance with law. As observed earlier, the original authority cannot reopen the issue as to whether the appellant is entitled to credit or not. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

(abr)

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To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Regional Bench, Shastri Bhavan Annexe,
Haddows Road, Chennai.

2.The Commissioner of Central Excise,
ATD Street, Race Course Road,
Coimbatore.

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Copy To:
The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.K.Jayachandran, Advocate Sr.No.33126
+1 cc to Mr.P.Rajkumar, Advocate Sr.No.33584

C.M.A.No.647 of 2011

CSL/07.06.2019

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