IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.08.2019
Pronounced on: 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.No.9286 of 2015
and
M.P.Nos.1 & 2 of 2015

M/s.Tamil Nadu Generation and
Distribution Corporation Ltd.,
Workshop Circle,
Kolathur Road, Mettur Dam-636 401
rep. by its Superintending Engineer.
... Petitioner

Vs.

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road, Salem-636 001. ... Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the entire records relating to the Order No.8 of 2014 (Commissioner) [C.No.V/73/15/77/2012-CEx. Adj.] dated 11.12.2014 of the first respondent and to quash the same.

For Petitioner : Mr.J.Shankar Raman

For Respondent : Mr.V.Sundareswaran

O R D E R

The petitioner Corporation, among other activities, undertakes the process of cutting and drilling of holes of MS angles. A show cause notice dated 07.03.2014 was served on them proposing to demand Central Excise duty to the tune of Rs.6,91,79,759/- on transformer structural materials, otherwise known as tower parts and structure part which consists of clamps, different types of channel cross arms, stay set and transformer structure special clamps cleared as non excisable during the period of 2009 to 2013. It was proposed therein to classify the disputed items under heading No.7308 of schedule to the Central Excise Tariff Act, 1985 (hereinafter referred to as 'CET Act'). A notice invoked the erstwhile proviso to section 11(A), 11(A) (v) of the Central Excise Act, 1944 (hereinafter referred to as 'CE Act') along with penalty under Rule 25 r/w.11 (A)(c) of the CE Act. The petitioner Corporation had filed the reply dated 03.04.2014 assailing the allegations and stating that the process of cutting does not amount to manufacture in view of the various decisions of the Tribunal in the petitioner's own case. A statement of demand dated 06.05.2014 was issued demanding duty for the period from April 2013 to March 2014, for which the petitioner had filed reply dated 03.06.2014, assailing the same. By the impugned order No.8 of 2014 (Commissioner) [C.No.V/73/15/77/2012-CEx. Adj.] in original dated 11.12.2014, the first respondent confirmed the demand and imposed penalty. The said order was put under challenge in the present Writ Petition.

2. Heard Mr.J.Shankar Raman, learned counsel for the petitioner and Mr.V.Sundareswaran, learned Standing counsel appearing for the respondents.

3. The learned counsel for the petitioner submitted that the Tribunal in the case of CCE Madras V. TNEB Workshop reported in 2000 (124) ELT 638 (Tribunal) and CCE V. Superintending Engineer, TNEB reported in 2001 (131) ELT 510 (Tribunal) had resolved the dispute in favour of the petitioner's Corporation as to whether the process undertaken by the petitioner would amount to manufacture or not. As such, the action of the first respondent in not following the decisions of the Tribunal in the petitioner's own case is unjustified and illegal.

4. Per contra, the learned Standing counsel for the respondents would submit that the goods manufactured by the Assessee are excisable goods and are correctly classifiable under the heading no.7308 of schedule to the CET Act and therefore, liable for Central Excise duty. Insofar as the decisions of the Tribunal in the petitioner's own cases are concerned, the learned counsel submitted that such decisions are not relevant in the present scenario due to the introduction of the 8 digit code in the Tariff Act in alignment with the Customs Tariff.

5. I have given careful consideration to the submissions made by the respective counsels.

6. In connection with payment of duty for line materials, tower parts and structural parts pertaining to the order in original for the period 1993-94, the Department had accepted that there was no manufacturing activity and as the consequence, refunded the duty pay. In other words, the Department had accepted the petitioner's stand till the year 2008 that there was no manufacturing activity and in the present impugned order in original, a contrary stand has been taken that the activities

of the petitioner is a manufacturing activity and is a taxable commodity.

7. During the pendency of this Writ Petition, the question as to whether the refund sanctioned by the authorities holding the process like cutting, drilling, punching, bending and straightening of the materials viz., MS angles, MS channels and MS plates, does not amount to manufacture, is sustainable or not, the Commissioner of Central Excise through an order in original dated 06.07.2016 had relied upon the earlier orders of the CESTAT, as well as the Board Circular dated 26.06.2014 and observed that the decisions are binding on him and consequently, held that the processing of structural materials out of MS angles, does not amount to manufacture as no new products were manufactured and therefore, the proposal to recover the sanctioned refund amount under Section 11(A) of the CE Act was invoked and thereby dropped the recovery proceedings alone.

8. Likewise, when the similar issue as to whether the process adopted by the petitioner was a manufacturing activity or not, was taken up before the CESTAT for the various periods between 1993-2001, in 40374-40399/2015, 40433 of 2015 dated 26.02.2015, the appeals filed by the petitioner's Corporation were allowed by holding that the activity carried out by it, is not classifiable under heading 7308/2011. It is stated that the said order of the CESTAT was challenged before the Hon'ble Supreme Court by the department and the same was dismissed by upholding the Tribunal's order. When the CESTAT has already held that the petitioner's activities involved in the present Writ Petition to be a non manufacturing activity and such a ratio has already been upheld by the Hon'ble Apex Court, the present impugned order, passed on the basis that the petitioner's activity is a manufacturing activity, cannot be sustained. In view of the same, the Writ Petitioner would be entitled to succeed.

9. For the reasons stated above, the Order No.8 of 2014 (Commissioner) [C.No.V/73/15/77/2012-CEx. Adj.] dated 11.12.2014 on the file of the first respondent is hereby quashed. The Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.

DP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Road,
Salem-636 001.

W.P.No.9286 of 2015
and
M.P.Nos.1 & 2 of 2015

Kak(23/10/2019)