

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.8.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.No.3199 of 2019
and
C.M.P.No.18229 of 2019

Vedanta Limited,
formerly known as
M/s.The Madras Aluminium Company
Limited, P.B.Box, No.4,
Mettur Dam, Salem District 636 402.

Appellant

Versus

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

Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 130 of
Customs Act, 1962 against the Final Order No.40222/2019 dated
30.1.2019 in E/40068/2015-DB passed by the Customs, Excise and
Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For appellant : Mr.Raghavan Ramabadran for
Lakshmi Kumaran

For Respondents : Mrs.Hemalatha
Senior Standing Counsel

JUDGMENT

(Judgment of the court was made by Dr.VINEET KOTHARI, J.)

This Appeal has been filed by the Assessee, Vedanta Limited,
aggrieved by the order dated 30th January 2019 passed by the
CESTAT refusing to decide the matter of the Assessee on the
ground that the order of Commissioner(Appeals) impugned before
it and dismissed the Appeal on the ground that the same was time
barred.

2. The operative portion of the order passed by the learned
Tribunal on 30th January 2019 is quoted below for ready
reference:-

"From the above extraction, we do not find that there is any direction to dispose the appeal on the merits of the case. When the commissioner (Appeals) has rejected the appeal on the ground of being time-barred, this Tribunal cannot go into the merits of the matter. We do not find any flaw in the rejection of the appeal by Commissioner(Appeals). On reading of the judgment dated 3.12.2014 of the Hon'ble High Court, it is very much clear that there is no direction to decide the appeal on merit and there is no room for any confusion. The case laws cited by Ld. counsel for appellant as to the issue of demand of duty on Aluminium Dross cannot be considered for the reason that the appeal filed before Commissioner (Appeals) is time barred.

5. Following the decision of the Apex Court in Singh Enterprises (supra), we do not find any grounds to interfere with the impugned order. Appeal is therefore rejected."

3. Learned counsel for the appellant Mr.Raghavan Ramabadran urged before us that against the adjudication order, the Assessee had preferred a writ petition before this court in W.P.No.18727 of 2018 (filed by M/s.The Madras Aluminium Co. Ltd., which was later on merged with the present Appellant) whereby the learned Single Judge, by order dated 3.12.2014, granted liberty to the Appellant/Petitioner to file Appeal before the CESTAT against the order impugned before it and while considering the question of limitation, the CESTAT was directed to exclude the period from 4.8.2008 till the date of that order viz., 3.12.2014 and thus, a period of approximately 6 years was allowed to be excluded from the period of limitation. He, therefore, submitted that the learned Tribunal ought to have decided the Appeal on merits instead of dismissing the same merely on the ground that the Commissioner(Appeals) dismissed the same on the ground of limitation.

4. Learned Senior Standing Counsel for the Revenue Mrs.Hemalatha, however, supported the impugned order.

5. Having heard the learned counsel for the parties, we are of the opinion that the Appellate Authorities created under the Act ought to decide the Appeals usually on merits. The ground of time bar is a technical bar to the maintainability of the appeal before the competent forum and even if beyond a period, the time bar cannot be relaxed by the Appellate Authority itself, but, when once there was an intervention by the High Court under Article 226 of the Constitution of India and the learned Single Judge of this court clearly expressed in the

order that a period of approximately six years was to be excluded from the period of limitation, merely because the learned Single Judge did not direct further to decide the Appeal on merits, in our opinion, the learned CESTAT should not have dismissed the Appeal on the same ground without deciding the merits of the Appeal. Though we find that the Appeal filed before the first Authority viz., Commissioner(Appeals) itself was filed with a delay of 391 days as the Order in Original was dated 17.7.2006, but, the Appeal was filed on 16.8.2007 and from a big Company like the present Appellant, this kind of huge delay could not have been expected, but, the learned counsel submitted that since the Order in Original was not duly received but, later on upon proof of such service produced before the Commissioner(Appeals), he did not raise any objection and therefore, in such circumstances, the delay occurred in a bona fide manner.

6. Therefore, we are of the opinion that the even both the first Appellate Authority and the final Appellate Authority ought to have decided the Appeal on merits at least after the intervention of this court under Article 226 of the Constitution of India. The operative portion of the order passed by the Tribunal quoted above shows that the learned Tribunal has not understood the letter and spirit of the order passed by the learned Single Judge of this court and that since in the order dated 3.12.2014, the High Court did not give any specific direction to decide the appeal on merits, there was no room for any confusion and the appeal was dismissed as time barred. We do not agree with the said view of the learned Tribunal.

7. To allow the Revenue's interest to be compensated in this case, though obviously no prejudice has been established to have occurred to the Revenue Department, we direct that subject to payment of cost of Rs.1,00,000/- by the Appellant Company to the Revenue Department, the Commissioner(Appeals) shall decide the appeal now on merits and in accordance with law.

8. Thus, the impugned order passed by the first Appellate Authority as well as the Tribunal are set aside and the Appeal is restored to the Commissioner(Appeals) where the parties may appear in the first instance without any further notice on 12.9.2019 and the said Commissioner(Appeals) will decide the appeal on merits, in accordance with law, after giving reasonable opportunity of hearing to both the parties within a period of six months from today. The present Appeal is, accordingly, disposed of.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.

To:

1. The Commissioner of Central Excise,
No.1, Foulks Compound, Anai Medu,
Salem 636 001.
2. Vedanta Limited,
formerly known as
M/s.The Madras Aluminium Company
Limited, P.B.Box, No.4,
Mettur Dam, Salem District 636 402.

3.The Customs Excise and
Service Tax Appellate Tribunal
South Zonal Bench
Chennai

+1 cc to Mr.Lakshmi Kumaran Advocate sr 75193
+1 cc to M/s.R.Hemalatha Advocate sr 74330

C.M.A.No.3199 of 2019

aa05/09/2019



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