DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 12 OF 2020

The Commissioner of CGST and
Central Excise, Thane ..Appellant
vs.
Mahindra and Mahindra Ltd. ..Respondent

…........

Mr. P.S. Jetly, Senior Advocate a/w. Mr. J.B. Mishra for the appellant.
Mr. Sriram Sridharan for the respondent.

…........

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 27 FEBRUARY 2020

P.C.:-

This Appeal challenges the order dated 6 November 2018 passed by the Custom, Excise and Service Tax Appellate Tribunal in Appeal No.E/1273/2009-Mum.

2. In this Appeal filed by the Commissioner of CGST and Central Excise, Thane Commissionerate raised following questions as substantial questions of law :-

"a) Whether in the facts and circumstances of the case, the CESTAT was right in setting aside the penalty imposed

under Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 against the assessee ?

b) Whether in the facts and circumstances of the case, the CESTAT was right in holding that the issue was not free from doubts, when the assessee vide their letter dated 8.7.2005 claimed to have stopped availing Cenvat Credit after insertion of Explanation III in sub-rule6(3) of CENVAT Credit Rules, 2004 w.e.f. 16.5.2005 ?"

3. The learned counsel for the Respondent placed on record the order passed in Central Excise Appeal No.184 of 2019 wherein the Respondent had challenged the very same impugned order. The Appeal was accordingly disposed of by an order dated 16 January 2020. The order reads thus :-

" Heard learned Counsel for the parties.

2. This Appeal under Section 35G of the Central Excise Act, 1944 challenges the final order of the Customs, Excise & Service Tax Appellate Tribunal, Mumbai (Tribunal) dated 6 November 2018.

3. The Appellant has framed following questions as substantial questions of law :-

" (a) Whether in the facts and circumstances of the present case, CESTAT was correct in following its earlier Final Order No. A/107-110/2007/C-1 dated 12.2.2007 in holding that the tractors are exempted goods within the meaning of Rule 6(1) even though education cess, levied and collected from the Appellants on tractors, is a duty of

excise, merely for the reason that the tractors are wholly exempt from Basic Excise Duty levied under Section 3(1) of Central Excise Act ?

(b) Whether in the facts and circumstances of the present case, CESTAT was correct in denying credit by concluding that expression "duty of excise" appearing in Rule 2(d) of the Cenvat Credit Rules, 2002 / Cenvat Credit Rules, 2004 while defining "exempted goods", will cover only duty prescribed in the First Schedule and the Second schedule of the Central Excise Tariff Act,
1985 read with Section 3(1) of Central Excise Act, 1944 and no other duties of excise like education cess though duly specified in Rule 3(1) and Rule 3(3) of Cenvat Credit Rules, 2004 ?

(c) Whether in the facts and circumstances of the present case, CESTAT is correct in concluding that Rule (1) of CCR, 2004 is attracted to the present case, despite the position that (I) duty of excise in the form of education cess under Section 93 of Finance Act, 2004 is duly levied and paid on tractors and/or (ii) duty of excise in the form of cess under Section 9 of Industrial (Development and Regulation) Act, 1951 is duly levied and paid on tractors ? "

4. In a group of Appeals in respect of Assessee's own case, the above framed questions of law have been decided against the Revenue in the decision rendered on 4 December 2019 in CEXA No. 119 of 2007 and others. Hence, it do not arise for consideration in this Appeal. The 4^{th} question of law (d) is as under :-

"(d) Whether the CESTAT was correct in confirming the invocation of extended period of limitation in the present case despite setting aside the penalty imposed on the Appellants, ingredients for both propositions being the

same?"

This question relates to penalty imposed. The decision having been rendered in the Appellant's favour on merits, the issue of penalty will have to be answered in favour of the Appellant. Accordingly, the question of law no. (d) is answered against the Respondent and in favour of the Appellant.

5. The Appeal is disposed of in the above terms."

4. In view of the above order, the questions proposed do not arise for consideration. The Appeal is accordingly, disposed of.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane Digitally signed by Diksha Rane Date: 2020.02.28 13:09:59 +0530