

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Judgment Reserved On 04.02.2021	Judgment Pronounced On 11.02.2021
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C.M.A.No.3003 of 2014
and M.P.No.1 of 2014

M/s.Alagappa & Co.,
28, Sathy Second Cross,
Gandhipuram, Coimbatore-641 012.

... Appellant

-vs-

1.The Customs, Excise and Service Tax
Appellate Tribunal,
Haddows Road, Chennai-600 006.

2.The Commissioner of Central Excise &
Service Tax, 6/7, A.T.D.Street,
Race Course Road, Coimbatore-641 018.

... Respondents

Appeal under Section 35G of the Central Excise Act, 1944
against the order dated 03.06.2013 made in Final Order No.40204
of 2013 on the file of the Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.T.Ramesh

For Respondents: R1 - Tribunal
: R2 - Mr.V.Sundareswaran

JUDGMENT

T.S.Sivagnanam, J.

This appeal by the appellant/assessee under Section 35G of
the Central Excise Act, 1944 (hereinafter referred to as "the
Act"), is directed against the order dated 03.06.2013 passed by
the Customs, Excise and Service Tax Appellate Tribunal, South

Zonal Bench at Chennai (for brevity "the Tribunal") in Final Order No.40204/2013.

2.The assessee has raised the following substantial questions of law for consideration:-

"1.In the facts and circumstances, whether, Rule 25 of Central Excise Rules 2004 is applicable during the disputed period to the dealers and whether penalty can be imposed on the dealers under the said Rule;

2.In the facts and circumstances, whether, the first respondent is correct in holding that the appellant has not contested the commission of fraud when all along the appellant is contesting and participating in the proceedings; and

3.In the facts and circumstances, whether, the 1st respondent is correct in not considering the submission that the Commissioner (Appeals), the 1st Appellate Authority, has traversed beyond the scope of the adjudication order.

3.The assessee is registered with the Central Excise Department as a dealer of iron and steel products. The assessee was issuing CENVAT invoices to various buyers. The assessee was visited with a show cause notice dated 04.05.2009, proposing to impose penalty under Rules 25 and 26 of the Central Excise Rules, 2002 (hereinafter referred to "as the Rules"), on the allegation that the assessee has supplied non-duty paid goods to M/s.Amtex Alloy Private Ltd., but passed on the CENVAT credit, during the period from October, 2004 to July, 2006.

4.The assessee submitted their reply stating that they have supplied only duty paid inputs and there is no proved evidence to allege that the assessee has supplied the non-duty paid goods. Further, the assessee contended that Rule 25 or Rule 26 of the Rules would not stand attracted to the assessee's case.

5.The reply was rejected by the Adjudicating Authority by order dated 21.01.2010, and penalty was imposed under Rule 25 of the Rules read with Section 11AC of the Act. Aggrieved by the same, the assessee preferred appeal to the Tribunal, which was rejected by the impugned order dated 03.06.2013. Aggrieved by the same, the assessee is before us by way of this tax case appeal.

6.We have elaborately heard Mr.T.Ramesh, learned counsel appearing for the appellant/assessee and Mr.V.Sundareswaran, learned Senior Standing Counsel for the second respondent/Revenue.

7.The assessee would contend that the first appellate authority erroneously held that the allegation of commission of fraud by the assessee was not contested by the assessee.

8.The learned counsel referred to various observations made in the Order in Original dated 21.01.2010, to buttress his submission that the assessee was contesting the said issue. Therefore, it is submitted that Rule 25 of the Rules would not stand attracted more so when, the assessee is not a manufacturer. In support of his contention, the learned counsel placed reliance on the decision in Commissioner of Central Excise vs. LG Equipments [2001 (128) E.L.T. 52 (SC)].

9.The learned Senior Standing Counsel has prayed for sustaining the order passed by the Tribunal and has referred to Rule 9 as well as Rule 25 of the Rules, which would clearly show that the said Rules would stand attracted in the assessee's case, as he is a registered dealer. The learned counsel placed reliance on the decision in the case of Commissioner of Central Excise, Salem vs. CESTAT, Chennai [2019 (366) E.L.T. 647 (Madras)].

10.After elaborately hearing the learned counsels for the parties and perusing the materials placed on record, we find that Rule 25 of the Rules would clearly stand attracted to the case on hand. Rule 25 deals with 'confiscation and penalty'. Sub-Rule (1) states that subject to the provisions of Section 11AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer (a) removes any excisable goods in contravention of any of the provisions of the rules or the notifications issued under the rules or (d) contravenes any of the provisions of the rules or the notifications issued under the rules with an intent to evade payment of duty, then all such case shall be liable for confiscation and the producer or manufacturer or the registered person of the warehouse or a registered dealer, as the case may be, shall be liable to penalty. Admittedly, the assessee is a registered dealer.

11.The Tribunal rightly referred to Rule 11(7), which covers the removal from the premises of a second stage dealer and for such removal, the second stage dealer has to issue proper invoices disclosing full and true particulars. On facts, the Tribunal approved the finding of the Adjudicating Authority and the first appellate authority that proper invoices were not issued and consequently, there is contravention of Rule 25(a) in respect of duty paid goods supplied to units not availing CENVAT credit. Further, the Tribunal rightly observed that in respect of non-duty paid goods, cleared to the manufacturers, under invoice showing duty payment, there is a clear violation of the

Rules with intent to evade payment of excise duty on final products manufactured by paying such duty through fraudulent credit. Thus, the entire dispute revolves on facts, which have been brought out in detail by the Adjudicating Authority in Order-in-Original dated 21.01.2010.

12.Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

13.Accordingly, the appeal fails and is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

abr
To

The Customs, Excise and Service Tax
Appellate Tribunal, South Zone Bench,
Haddows Road, Chennai-600 006.

Copy to

The Section Officer,
VR Section High Court,
Madras.

+lcc to Mr.T.Ramesh, Advocate Sr.8557
+lcc to Mr.A.P.Srinivas, Advocaes Sr.8033

C.M.A.No.3003 of 2014

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srg 01/04/2021