BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2022

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR**

C.M.A(MD)No.599 of 2009

The Commissioner of Central Excise,
Central Revenue Building,
Tractor Road,
NGO 'A'Colony,
Thirunelveli - 627 007. :Appellant/Respondent

.vs.

M/s.Sterlite Industries(I)LImited,
SIPCOT Industrial Complex,
Madurai Bye Pass Road,
Turicorin, T N 628 002. : Respondent/Appellant

PRAYER: Civil Miscellaneous Appeal filed under Section 35 of the Central Excise Act, 1944 praying this Court to set aside the Final Order No.1431/2008, dated 08.12.2008, dated 8.12.2008 passed by the Southern Zonal Bench of CESTAT, Chennai in Appeal NO.E/720/07/MAS (arising out of Order in Original No.32/Commr/2007, dated 11.07.2007 passed by the Commissioner of Central Excise, Tirunelveli).

For Appellant :Mrs.S.Ragaventhre
Junior Standing Counsel
For Respondent :Mr.Vishal Agarwal
Senior Counsel
for Mr.Y.Prakash

JUDGMENT
****

[Judgment of the Court was made by **R.SUBRAMANIAN,J.**]

Challenge by the Revenue is to the order of the CESTAT reversing the order of the Commissioner of Central Excise, dated 11.07.2007, under which, the Commissioner concerned had upheld the demand of a sum of Rs.4,50,13,457/- made by the Department under Section 11-A of the Central Excise Act, 1944, on the ground that the sactioning of rebate to the tune of Rs.4,50,13,457/- was erroneously made and the assessee is not entitled to the rebate.

2.The contention of the assessee before the CESTAT is that the valuation of the goods would depend upon the value at the London Metal Exchange at the time of delivery of the goods and therefore there arose difference in the value of the goods. The assessee valued the goods at a particular rate and paid the duty. Learning that the value of the goods is more as per the ruling price in the London Metal Exchange, the Petitioner had filed a Supplementary Assessment and has paid additional duty to the tune of Rs.4,50,13,457/-.The assessee claimed rebate of the said sum. The Department originally sanctioned the rebate and thereafter, the department had raised a demand on the assessee for repayment of the said sum of Rs.4,50,13,457/-, which according to the Department was erroneously allowed as rebate.This demand was confirmed by the Commissioner.

3.The CESTAT, however, found that even as per the Circulars of the Department, in the Supplementary Assessment made and the duty paid also to have to be refunded and the assessee is entitled to the rebate of the duty paid under Supplementry Assessment prior to the sanction of the rebate. CESTAT has also found that there is no dispute with regard to the rate of tax and the payment of tax. CESTAT relied on Paragraph No.4 of the Circular No.510, dated 3.2.2020, which reads as follows:

> *''4.Same principle should be applied to cases where any short payment of duty is noticed and the assessee pays the differential duty prior to sanction of rebate. Whether he pays before or after adjudication of the case of short payment.The rebate of the full amount of duty paid on the goods exported(not the fine and/or penalties imposed, if any)shoudl be allowed, provided the initial rebate claim was for the said full duty, or a supplementary claim was filed within the limitation period.''*

4.In view of the above, we are unable to find fault with the CESTAT, for having allowed the appeal of the assessee and concluding that the claim of the Department is not correct. The Civil Miscellaneous Appeal, therefore fails and accordingly, the same stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsn

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Southern Zonal Bench of CESTAT,
Chennai.

2.The Commissioner of Central Excise,
Tiruneveli.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.S.RAGAVENTHRE, Advocate (SR-7499[F] dated 21/02/2022)

JUDGMENT MADE IN
C.M.A(MD)No.599 of 2009
17.02.2022

NSN(CO)
GC(03.03.2022) 3P 6C