WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2022

CORAM

THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

C.M.A.(MD)No.1328 of 2015

The Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Tirunelveli627 007. ... Appellant/Appellant

Vs.

Tuticorin Alkali Chemicals and Fertilizers Ltd.,
Harbour Construction Road,
Tuticorin-628 005 ...Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, to set aside the final order No.40343/2014 dated 05.06.2014 passed by the CESTAT South Zonal Bench, Chennai in Appeal No.E/420/2008-DB arising out of order-in-order No.02/COMMR/CE/2008 dated 26.06.2008 passed by the Commissioner of Central Excise, Tirunelveli.

https://www.mhc.tn.gov.in/judis

WEB COPY

For Appellant : M/s.N.Dilipkumar, assisted by
Mr.K.Prabhu

For Respondent : M/s.S.Vishnupriya, assisted by
Mr.M.Inbarajan

JUDGMENT

(Judgment of the Court was delivered by N. ANAND VENKATESH,J.)

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

The Revenue has filed this appeal questioning the order passed by the Customs, Excise and Service Tax Appellate Tribunal, dated 05.06.2014.

2.A show cause notice was issued to the respondent on 27.12.2007 proposing to demand an amount of Rs.1,09,00,260/-(One Crore Nine Lakhs Two Hundred and Sixty only) being the amount equivalent to 10% of the value of the exempted goods under Rule 6(3) of the Cenvat Credit Rules, 2004. Through the impugned order dated 26.06.2008, the adjudicating authority dropped the proceedings. Aggrieved by the same, the revenue filed an appeal before the Tribunal.

https://www.mhc.tn.gov.in/judis

WEB COPY

3.The Tribunal, after taking into consideration the scope of Section 73(2) of the Finance Act, 2010, came to a conclusion that since the assessee has exercised the option of paying the amount of input credit along with interest and thereby had reversed the credit with interest, even before the show cause was issued, there was no ground to impose the demand against the assessee. Aggrieved by this order, the present appeal has been filed before this Court.

4.When the appeal was admitted by this Court, the following substantial question of law was framed:

> *"Whether an assessee can avail the benefit under Section 73 of the Finance Act 2010 without paying 24% interest per annum from the due date as contemplated under Section 73(2) of the Finance Act, 2010 and as mentioned in the proviso to Rule 6(7) of the CENVAT Credit Rules 2004?"*

5.Heard Mr.N.Dilipkumar, learned counsel appearing for the appellant and M/s.S.Vishnupriya, learned counsel appearing for the respondent.

https://www.mhc.tn.gov.in/judis

WEB COPY

6.The learned Standing Counsel appearing on behalf of the appellant brought to the notice of this Court the amendment that was made to the Finance Act 2010 in and by which, the amount of interest that has to be paid by the manufacturer was fixed at 24% from the due date till the date of payment and what was paid as interest by the appellant was only 13% and therefore, the learned Standing Counsel contended that the respondent/assessee is not entitled to avail of the option that has been provided under Section 73(2) of the Finance Act, 2010.

7.Per contra, the learned counsel for the respondent submitted that the issue involved in the present appeal is no longer *res integra* and in order to substantiate his submission, the learned counsel brought to our notice judgments of this Court in the case of ***Commissioner of Central Excise, Chennai-II-vs-ICMC Corporation Ltd.,*** reported in ***2015(315)E.L.T. 388(Mad.)*** and in ***C.C.E., Chennai-II-vs-Mount Mettur Pharmaceuticals Limited***, reported in ***2017(356)E.L.T.184(Mad.)***.

8.The learned counsel for the respondent by placing reliance upon the above judgments submitted that once the assessee had reversed the credit

https://www.mhc.tn.gov.in/judis

WEB COPY

along with interest even prior to the issuance of show cause notice and this was made even prior to the amendment made to the Finance Act, 2010, there is no scope for applying the interest that is fixed through the amendment and hence, there is no absolutely ground to interfere with the order passed by the Tribunal.

9.We have carefully considered the submissions made on either side and perused the materials available on record.

10.There is no dispute with regard to the fact that the respondent had reversed the credit with interest by availing of the option provided under Section 73(2) of the Finance Act, 2010, on 01.08.2007, even before the issuance of show cause notice. The only issue to be considered is as to whether the subsequent amendment that was brought into force in the year 2010 and was given retrospective effect, can be put against the assessee. The judgment cited by the learned counsel for the respondent squarely covers this issue.

https://www.mhc.tn.gov.in/judis

WEB COPY

11. For better appreciation, the relevant portions of the judgments referred to supra are extracted hereunder:

(a)In ***Commissioner of Central Excise, Chennai-II-vs-ICMC Corporation Ltd.,*** reported in ***2015(315)E.L.T.388(Mad.),*** it is held as follows:

> *"As per Section 73 sub-section (2) of the Finance Act, 2010 the assessee has to make as application to the Commissioner of Central Excise along with documentary evidence and a Certificate from the Chartered Accountant or a Cost Accountant, certifying the amount of input credit attributable to the inputs used in or on relation to the manufacture of exempted goods within a period of six months from the date on which the Finance Bill, 2010 received the assent of the President.*
>
> *5.Considering the fact that the assessee had reversed the credit even prior to the amendment and the order of the Tribunal is in fact no different from what is contemplated under the Finance Act, 2010, we do not find anything survives further for this Court to consider the merits of the case pleaded by the Revenue."*

https://www.mhc.tn.gov.in/judis

WEB COPY

(b)In ***C.C.E., Chennai-II-vs-Mount Mettur Pharmaceuticals Limited***, reported in ***2017(356)E.L.T.184(Mad.),*** it is held as follows:

> *"12.2 While confirming the order of the CESTAT, Madras, setting aside demand of duty, the Hon'ble Division Bench in CCE, Puducherry's case followed an earlier decision of this Court in Commissioner of Central Excise v. ICMC Corporation Ltd., reported in 2015(315) E.L.T. 388(Mad.), wherein, after considering the above amendments, this Court held that, as per Section 73 sub-section(2) of the Finance Act, 2010, the assessee has to make an application to the Commissioner of Central Excise along with documentary evidence and a certicate from the Chartered Accountant or a Cost Accountant, certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of exempted goods within a period of six months from the date on which the Finance Bill, 2010 received the assent of the President Considering the fact that assessee had reversed the credit even prior to the amendment and the order of the Tribunal was in fact no different from what is contemplated under the Finance Act, 2010, this Court held against the Revenue."*

https://www.mhc.tn.gov.in/judis

WEB COPY

12.In the light of the above judgments, we are of the view that there is no manifest error in the final order passed by the Tribunal and the substantial question of law raised in this appeal is answered accordingly.

13.This Civil Miscellaneous Appeal accordingly stands dismissed. No costs.

(M.S.R.,J.) (N.A.V.,J.)
09.11.2022

Index : Yes/No
Internet : Yes
Ns

To:

1.The Commissioner of Central Excise
Central Revenue Building,
Tractor Road, NGO 'A' Colony,
Tirunelveli627 007.

2.The Section Officer,
VR Section,
Madurai Bench of Madras
High Court,
Madurai.

https://www.mhc.tn.gov.in/judis

WEB COPY

M.S.RAMESH,J.

and

N. ANAND VENKATESH,J.

Ns

C.M.A.(MD)No.1328 of 2015

09.11.2022

https://www.mhc.tn.gov.in/judis