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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1721 of 2015

The Commissioner of Central Excise,
Salem,
Office of the Commissioner of Customs
and Central Excise,
No.1, Foulks Compound, Anna Medu,
Salem – 636 001. ... Appellant

Vs.

M/s.Chola Textile Process,
No.290, Valayalkara Street,
Erode – 638 001. ... Respondent

Prayer: Appeal under Section 35G of the Central Excise Act, 1944, to set aside the Final Order No.40755 of 2014 dated 21.08.2014 passed by CESTAT, Chennai and to uphold the Order-in-Original No.8/2002 dated 30.04.2002 passed by the Additional Commissioner of Central Excise, Coimbatore.

For Appellant : Ms.M.Revathi

For Respondent : Ms.R.Sri Viswapriya
for Mr.T.Ramesh

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JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This Civil Miscellaneous Appeal is directed against the Impugned Final Order No.40755 of 2014 dated 21.08.2014 passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Chennai in E.No.1187/2004-DB.

2. This Civil Miscellaneous Appeal was admitted on 14.08.2015 and the following substantial questions of law were framed for being answered:-

i. Whether the Tribunal was correct in passing the impugned order on 21.08.2014 following the decision reported in 2004 (166) ELT 27 in the case of M/s.Beauty Dyers, dated 20.12.2001?
ii. Whether the Tribunal was justified in ignoring Section 131 of the Finance Act, 2001, in inserting Section 38A to the Central Excise Act, 1944 with retrospective effect from 28.02.1944?
iii. Whether the Tribunal was correct in setting aside the Order-in-Original No.8/2002, dated 30.04.2002 when the order of the ACP as determined by the Commissioner in C.No.IV/16/447/98 Cx.Pol.(Vol-I) dated 15.07.1999 was not challenged in the appeal?
iv. Whether the Tribunal was justified in ignoring the subsequent development of law with regard to the decisions of the Apex Court in (2000) 117 ELT 273 upholding the Scheme of Compounded payment or duty under Section 3A read with Rule 96ZO and 96ZP of the Central Excise Act, 1944?
v. Whether the Tribunal was right in not appreciating the law that the omission of Section 3A of the Central Excise

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Act, 1944 is an amendment to the Central Excise Act, 1944 and is saved by the General Clauses Act, 1897?

vi. Whether the order of the Tribunal in following the decision in 2004 (166) ELT 27, dated 20.12.2001 was legally sustainable when the issue regarding the validity of the very rules was revived pursuant to the decision of the Apex Court in (237) ELT 641, dated 05.05.2009 in the case of Union of India Vs. M/s.Krishna Processors and the subsequent decision of the Apex Court in 2002 (146) ELT 254 in the case of CCE Vs. S.P.B.L. Limited?

vii. Whether the Tribunal was correct in ignoring the judgment of the Apex Court in 2007 (213) ELT 486 in the case of CCE Vs. Roop Textiles Mills Limited?

3. By the Impugned Final Order dated 21.08.2014, CESTAT has allowed the appeal filed by the respondent / assessee against the Order-in-Appeal No.274/2004 (CE) (SLM) dated 02.06.2004.

4. Earlier, the respondent / assessee had suffered an adverse order in the hands of the Additional Commissioner of Central Excise, Coimbatore vide Order Sl.No.8/2002 (ADC) bearing Ref.C.No.V/Ch.52/15/33/2000 Cx.Adjn. dated 30.04.2002.

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5. By the aforesaid Order dated 30.04.2002, the Additional Commissioner of Central Excise, Coimbatore, had confirmed the differential duty under differential demand of Rs.16,30,942/- under Sub-Rule 96ZQ(5)(i) of the Central Excise Rules, 1944 as it stood then read with Section 11A(2) of the Central Excise Act, 1944 and Section 38 of the Central Excise Act, 1944 and imposed penalty of Rs.16,30,942/- under Rule 96ZQ(5)(ii) of the Central Excise Rules, 1944 read with Section 38A of the Central Excise Act, 1944 and also ordered recovery of interest under Rule 96ZQ(5)(i) of the Central Excise Rules, 1944 read with Section 11AB(1) and Section 38 of the Central Excise Act, 1944.

6. The respondent herein a dying unit, had one Hot Air Stenter installed in its factory with 4 Chambers plus gallery portion of 0.3213 meters totalling 4.3213 meters. The annual capacity of production and the rate of duty were determined at Rs.1,50,000/- per month by the Commissioner of Central Excise, Coimbatore vide Order dated 15.07.1999 in his proceedings bearing Ref.C.No.IV/16/447/98 CE.Pol.

7. The respondent / assessee however failed to pay the compound levy of

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Rs.16,30,942/- for the period between 16.12.1998 and 28.02.1999. Hence, notices were issued which were confirmed by the Additional Commissioner of Central Excise, Coimbatore vide Order dated 30.04.2002, mentioned above and affirmed by the Commissioner of Central Excise (Appeals), Salem.

8. CESTAT has allowed the appeal on the strength of the order passed by this Court in **Beauty Dyers** Vs. **Union of India**, 2004 (166) E.L.T. 27 (Mad.) wherein, this Court held that Rule 3 of the Rules issued in the Notification No.42/1998-Central Excise (CE) (N.T.) dated 10.12.1998 cannot be sustained as it was *ultra vires* Section 3A of the Central Excise Act, 1944.

9. CESTAT has observed that the said decision has been followed and in the light of the Order of this Court dated 13.11.2006 in W.P.No.30384 of 2005 in the case of the respondent, the demand that was confirmed earlier by the adjudicating authority the Additional Commissioner of Central Excise, Coimbatore as affirmed by the Commissioner of Central Excise (Appeals), Salem, were reversed by CESTAT.

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10. Learned counsel for the respondent would submit that a contra view has been taken by the Division Bench of this Court in **Commissioner of Central Excise** Vs. **M/s.Adhavan Processor (P) Limited, Erode and another** vide Order dated 29.07.2016 in C.M.A.No.3301 of 2011 in the light of the decision of the Hon'ble Supreme Court in **M/s.Shree Bhagwati Steel Rolling Mills** Vs. **Commissioner of Central Excise and another**, 2016 (3) SCC 643.

11. We have heard the learned counsel for the appellant and the learned counsel for the respondent. We have considered the facts of the case.

12. We are of the view, there is no merits in this Civil Miscellaneous Appeal.

13. The decision of this Court in **Beauty Dyers** Vs. **Union of India**, 2004 (166) E.L.T. 27 (Mad.) has been also affirmed by the Hon'ble Supreme Court in **Union of India and others** Vs. **Beauty Dyers (through partner)**, (2015) 17 SCC 817.

14. Since the basis of the demand has been struck down by this Court in

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Beauty Dyers Vs. **Union of India**, 2004 (166) E.L.T. 27 (Mad.) which decision was not only affirmed by the Division Bench of this Court but also by the Hon'ble Supreme Court, the question of entertaining this Appeal and answering the issue in favour of the revenue does not arise.

15. Hence, this Civil Miscellaneous Appeal is liable to be dismissed and is accordingly dismissed. There shall be no order as to costs.

[R.S.K., J.] **[C.S.N., J.]**

13.11.2024

Neutral Citation : Yes / No

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To:

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