IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

C.M.A.No.2904 of 2012
and M.P.No.1 of 2012

Commissioner of Central Excise,
Salem,
O/o Commissioner of Customs and Central Excise,
No.1, Foulk's Compound, Anna Medu,
Salem – 636 001.

... Appellant

Vs

1. M/s.Burn Standard Co., Limited,
   Post Box No.565, Salem – 636 005.

2. Customs, Excise and Service Tax
   Appellate Tribunal, South Zonal Bench,
   Shastri Bhawan Annexe, 1st Floor,
   No.26, Haddows Road, Chennai – 600 006.

... Respondents

PRAYER: APPEAL filed under Section 35G of the Central Excise Act, 1944 against Order dated 20.03.2012 passed in Final Order No.280 of 2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal.

For Appellant : Mr.K.S.Ramaswamy

Senior Standing Counsel

For Respondents : Ms.L.Maithili
for M/s.Maithili Asso. - R1
Tribunal - R2

JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

The present Civil Miscellaneous Appeal has been admitted on the following two substantial questions of law vide order dated 28.09.2012:

> *(1) Whether the Appellate Tribunal was correct in applying the Amendment to Rule 6 of the CENVAT Credit Rules, 2004 vide Finance Act, 2010 effective from 08/05/10 to 07/11/10, for the period from January 2009 to December 2009, wherein the applicability of amendment was specifically restricted to the period from 10/09/04 to 31/03/08.*
>
> *(2) Whether the Appellate Tribunal was correct in applying the Amendment to Rule 6 of the CENVAT Credit Rules, 2004 vide Finance Act, 2010 automatically even without any application made by the assessee along with documentary evidence supported by a certificate from the Chartered Accountant or Cost Accountant, when it had factually concluded that the assessee had failed to maintain separate accounts in respect of goods used in the manufacture of exempted and dutiable goods.'*

2. The Revenue has challenged the order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) dated 20.03.2012, setting aside the order of the Commissioner of Central Excise and remanding the matter to the file of the adjudicating authority for re-computation of quantum of credit to be reversed. An order of stay of the impugned order has been granted by the Court on 28.09.2012.

3. According to the respondent/assessee, the remand is itself unwarranted as it has not taken note of the detailed basis on which the assessee's reversal has been found to be correct, by the lower authorities.

4. In fact, identical questions had been considered by this Court in the assessee's own case for the period from April, 2008 to December, 2008, in a decision reported as *Commissioner of Central Excise, Salem V. Burn Standard Co. Limited* (295 ELT 671).

5. Compared with the questions as admitted in the present appeal, (extracted in paragraph 1), the scope of the appeal for the prior period is far wider as may be seen from the substantial questions decided therein, extracted below:

> *'(i) Whether the Appellate Tribunal was correct in applying the Amendment to Rule 6 of the CENVAT Credit Rules, 2004 vide Finance Act, 2010 which is applicable for the period from 10th September 2004 to 31st March 2008 whereas the period is dispute being April 2008 to December 2008.*
> *(ii) Whether the Appellate Tribunal was correct in accepting the oral plea of the assessee, without any documentary evidence supported by a certificate from the Chartered Accountant or Cost Accountant, which had to be filed within 6 months from the date of assent of the President, as per Section 73(2) of the Finance Act, 2010, when factually the assessee had failed to comply with the condition requisite under the Finance Act, 2010.*
> *(iii) Whether the Appellate Tribunal was justified in setting aside the order of the Adjudicating Authority by totally ignoring the law that the assesee having failed to opt for the procedure under the substituted rule 6(3A) of the CENVAT Credit Rules, 2004 with effect from 1.4.2008 (instead debited/ reversed the duty amount based on their own theoretical basis calculation) is not entitled for any relief under the Act.*
> *(iv) Whether the Appellate Tribunal having after factually concluded that the assesee had failed to maintain separate accounts in respect of goods used in the manufacture of exempted and dutiable goods was*

justified in setting aside the Order-in-Original and allowing the appeal.
(v) Whether the Appellate Tribunal misdirected itself and thereby fell into an error in setting aside the levy of duty for the period from April 2008 to December 2008 (Rs.1,63,40,443) being 10% of the total price of exempted exercisable goods cleared with consequential interest and penalty thereof.
(vi) Whether the Appellate Tribunal committed an apparent error of jurisdiction in not appreciating the facts of the case and provision of law in setting aside the Order-in-Original No. 1 of 2010 dated 29.1.2010 and remanding the case back to the adjudicating authority for adjudication afresh?'

6. The difference of opinion, as to whether the methodology for reversal of credit relatable to Dead Burnt Magnesite (DBM), an exempt product, has been carried out correctly by the respondent, remains identical in both the appeals.

7. In that case as well, separate accounts had not been maintained in regard to the utilisation of furnace oil for DBM and the final dutiable product. The operative portion of the order of the Division Bench, at paragraphs 13 to 15 decide the issue and are extracted below for completion of narration:

"13. A reading of the amendment made to Rule 6 under Section 73 the Finance Act, 2010, shows that the amendment procedure of the CENVAT Credit under Rule 6 was to have retrospective effect from September, 2004. The said amendment is provided for by insertion under Rule 6(6). The said amendment reads as under:

Sl.No.	*Provisions of CENVAT Credit Rules 2004 to be amended*	*Amendment*	*Period of effect of amendment*
(1)	*(2)*	*(3)*	*(4)*
	Rule 6 of the CENVAT Credit Rules, 2004 as	*In the CENVAT Credit Rules, 2004, in rule 6, after sub-*	*10th day of September 2004 to the*

		published vide notification number G.S.R. 600(E), dated the 10th September 2004 [23/2004 - CENTRAL EXCISE (N.T.) dated the 10th September 2004].	*rule (6), the following sub-rule shall be inserted, namely :- "(7) Where a dispute relating to adjustment of credit on inputs or input services used in or in relation to exempted final products relating to the period beginning on the 10th day of September, 2004 and ending with the 31st day of March, 2008 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2), and clauses (a) and (b) of sub-rule (3), a manufacturer availing CENVAT credit in respect of any inputs or input services and manufacturing final products which are chargeable to duty*	*31st day of March 2008 (both days inclusive).*

		and also other final products which are exempted goods, may pay an amount equivalent to CENVAT credit attributable to the inputs or input services used in, or in relation to the manufacture of, exempted goods before or after the clearance of such goods: *Provided that the manufacturer shall pay interest at the rate of twenty-four per cent, per annum from the due date till the date of payment of the said amount.* *Explanation.-- For the purpose of this sub-rule, "due date" means the 5th day of the month following the month in which goods have been cleared from the factory.*	

Thus, the said Rule covers the case of the assessees in whose cases there existed a dispute relating to adjustment of credit on inputs or input services used in or in relation to exempted final products and the period of dispute related to the period beginning from 10th September, 2004 to 31st March 2008. In such cases, as per Section 73(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 certificate 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. Thus, the Finance Act, effective from 08.05.2010 to 07.11.2010 - the six months period, expired on 07.11.2010. The period covered in this appeal is from April, 2008 to December, 2008.

14. Admittedly, the Revenue did not raise any question as regards the non-compliance of Sub Rule (3A) of Rule 6 of the CENVAT Credit Rules before the Tribunal. The submission of the Revenue before the Tribunal was that if proper reversal of credit attributable to the inputs used in the manufacture of exempted products was done, there was no scope for further demand. Learned counsel for the Revenue pointed out that the Adjudicating Officer categorically pointed out in paragraph 7.11, that there was nothing on record to show that the qualifying procedure and conditions specified under Sub Rule (3A) for payment of amount under clause (ii) of sub Rule (3) of Rule 6 had been followed by the assessee during the material period. He further pointed out that as per the Explanation to Sub Rule (3A) to Rule 6, the manufacturer should have availed of any of the options, failing which, the question of considering the claim even as per Sub Rule (3A) of Rule 6 does not arise.

15. We do not find any justification in accepting the plea of the Revenue. Considering the submission made by the Department's Representative before the Tribunal in the absence of a question raised before the Tribunal as regards the non-compliance of the option granted under the Explanation and the only question that was raised before the Tribunal being on the entitlement of the assessee on the reversal of credit attributable to the inputs used in the manufacture of exempted products, we do not find any justification to grant the relief sought for in the appeal. For the purpose of this case, it is not necessary at all for us to consider Section 73(2) of the Finance Act, 2010 at all. Consequently, the order of the Tribunal is confirmed. The Adjudicating Authority shall consider the contentions of the assessee under Section 73 Finance Act, 2010 and as per Rule 6 of CENVAT Credit Rules. The above Civil

Miscellaneous Appeal is dismissed. No costs. Consequently, connected MP is closed.”

8. We find that the issue answered by the Bench in that appeal, and that raised before us now, and the factual matrix upon which those questions have been posited, is identical. In this case as well, the Revenue has not disputed the fact that proper reversal of credit was attributable to the DBM and hence, the question of a further demand does not really arise. Thus, there is no necessity for any further enquiry.

9. As the order of this Court dated 11.01.2013 (295 ELT 671) is stated to have attained finality, applyiing the ratio of the same, the substantial questions of law are answered in favour of the assessee and order of the CESTAT dated 20.03.2012 is confirmed. Consequential order will be passed within a period of twelve (12) weeks from date of receipt of a copy of this order, after hearing the petitioner.

10. This Civil Miscellaneous Appeal and the connected Miscellaneous Petition are dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
19.08.2024

Index:Yes/No

Speaking order
Neutral Citation: Yes
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To

Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhawan Annexe, 1st Floor,
No.26, Haddows Road, Chennai – 600 006.

DR. ANITA SUMANTH,J.
and
MR. G.ARUL MURUGAN,J.

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