103 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:126139-DB

CEA-15-2022 (O&M)
Date of Decision: 23.09.2024

Principal Commissioner of Central Excise, Central Excise Commisionerate Gurgaon-II

…Appellant

Vs.

M/s Honda Motorcycles and Scooters India Pvt. Ltd. …Respondent

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Sunish Bindlish, Sr. Standing Counsel for the appellant.

Mr. Amrinder Singh, Advocate for the respondent.

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SANJEEV PRAKASH SHARMA, J.(Oral)

1. The questions of law which have been proposed by the appellant in the present appeal are as under:-

> 1. Whether the cenvat credit of the duty paid on the materials and capital goods used for fabrication, erection and commissioning of both the paint shops on turn key basis, which by virtue of there being immovable property embedded to earth and ceiling are not excisable goods under the Central Excise Act, 1944 and the rules made thereunder and the Central Excise Traffic Act, 1985, for their scooter and motorcycle plants was wrongly taken and irregularly utilized by them?
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> 2. Whether interest at the appropriate rate is leviable on the amount availed wrongly and utilized irregularly and whether they are liable for penal action for their act of omission and commission under the provision of the Central Excise Act, 1944 and the rules made thereunder?

2. Learned counsel for the appellant has stated that cenvat credit on air conditioners and on account of inputs sent to job workers not received back within the stipulated time, has not been pressed by the respondent and the same has been reversed. So far as the question of law proposed in relation to credit of materials and capital goods used for the erection and commissioning of the paint shop for scooters division and motorcycles division, we find that the questions of law are only with respect to questions No.1 and 2 alone.

3. The proposed questions of law, however, stand finally adjudicated and decided in favour of the assessee by this Court vide judgment dated 12.01.2024, in **Commissioner, Central Excise Commissionerate, Sonepat (Delhi-III) vs. M/s Ultra Tech Cement Ltd. 2024 (1) TMI 959**, wherein, this Court has held as under:-

> *"3. It has been brought to our notice that the decision of the larger Bench of the Tribunal stands reversed by the Division Bench of the Chhattisgarh High Court in* ***[Vandana Global Ltd. vs. Commissioner of Central Excise, Raipur, 2018 (16) GSTL, 462]*** *while placing reliance upon the judgment of the* ***[Gujarat High Court in Mundra Ports & Special Economic Zone Ltd., vs. Commissioner, 2015 (39) STR 726 (Guj.)]*** *and also in* ***[Thiru Arooran Sugars vs. CESTAT, Chennai, 2017 (355) ELT 373 (Mad.)].*** *The view taken as such was that the amendment could only operate prospectively which was made in the Cenvat Credit Rules, 2004 which came into force from 07.07.2009 and in such circumstances the benefit had been granted regarding the issue of the structures which are embedded to the earth and whether the structures were to be treated as inputs used in final products as input for capital goods. Out of the said judgment of the* ***[Chhattisgarh High Court, SLP (Civil) Diary No.20723/2018, Commissioner,***

> ***Customs and Service Tax (CGST) vs. M/s. Shri Nakoda Ispat Ltd.]*** *through its Authorised Person was preferred, which was dismissed on 12.07.2018.*
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> *4. Resultantly, we are of the considered view that even on merits as such, the issue has been settled in favour of the assessee and, therefore, we do not feel that in the present case, the issue of limitation and whether there is any suppression as such needs to be gone into, as argued by counsel for the Revenue since on merits the issue stands decided against it."*

3. In the aforesaid judgment, this Court has rejected the appeal on limitation. However, since we have already condoned the delay, we would not dismiss the appeal on limitation. As no substantial question of law worth examining left in the present appeal, the same is accordingly dismissed.

4. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

(SANJAY VASHISTH)
JUDGE

23.09.2024
rajesh

1. Whether speaking/reasoned? : Yes/No
2. Whether reportable? : Yes/No