

(2014) 12 MAD CK 0390

Madras High Court

Case No: Civil Miscellaneous Appeal No. 1347 of 2008

A.R.R. Sales Agency

APPELLANT

Vs

The Customs, Excise and Service
Tax Appellate Tribunal

RESPONDENT

Date of Decision: Dec. 5, 2014

Acts Referred:

- Central Excises and Salt Act, 1944 - Section 11B, 11B(1), 11B(2), 11B(5), 12B

Hon'ble Judges: R. Sudhakar, J; R. Karuppiah, J

Bench: Division Bench

Judgement

R. Sudhakar, J.

1. Aggrieved by the order of the Appellate Tribunal in dismissing the appeal filed by it, the assessee is before this Court challenging the said order by filing the present appeal, and this Court, vide order dated 24.4.08, framed the following substantial question of law for consideration :-

"Whether the appellant is eligible for refund of the difference paid by the manufacturer through modvat credit?"

2. The Assistant Commissioner of Central Excise, in a claim for refund, passed an order on 12.3.03, which reads as hereunder :-

"17. On scrutiny of the evidences for duty payment produced along with necessary worksheets and other financial accounts, the duty payment of Rs.2,25,044/- made through PLA by the manufacturer stands eligible for grant of refund and the same is same is substantiated with necessary documents. As per the provisions of Sec. 12B of Central Excise Act, 1944, any person who has paid the excise duty on any goods shall be deemed to have passed on the full incidence of such duty to the buyer of such goods, unless the contrary is proved by him. While considering the claim for the relief as per the Order-in-Appeal, the claimant was requested to furnish

necessary documentary evidence in this regard, in this office letters dated 16.12.2002, 04.02.2003 and in the PH intimation dated 27.02.03. The claimant in his reply dated 12.02.03 referred the documents already furnished as proof to establish that the duty incidence had been borne by him. On scrutiny of the said documents it was found that the price in the sales invoices of the claimant has been arrived at after deducting the duty element specifically shown and no other amount as excise duty or otherwise has been collected from the buyers, that as per the balance sheet and other financial accounts the excise duty has been shown as expenditure and that as the net price amount (i.e., less the excise duty paid) arrived at in the sales invoices only has been charged from the buyers. Hence, in view of the above, it is to be held that the claimant had borne the duty incidence and accordingly, I pass the following order :-

ORDER

I sanction refund of Rs.2.25,044/- (Rupees Two Lakhs Twenty Five Thousand and Forty Four only) to the claimant out of the total refund claim of Rs.6,43,456/- under Section 11B(2) of the Central Excise Act, 1944.

The claim for differential amount of Rs.4,18,412/- is rejected, as the same is not eligible for refund as discussed above."

3. Against the rejection of Rs.4,18,412/-, an appeal was filed to the Commissioner (Appeals), who upheld the rejection order and held as under :-

"6. I have carefully examined the impugned order and considered the appellants contentions. The short point for decision is whether the appellants are eligible for refund of the duty paid by the manufacturer through modvat, in terms of the Commissioner (Appeals) order. As per the Commissioner (Appeals), the impugned goods were not excisable during the material period. When the final products are not dutiable, the benefit of modvat credit is not available in respect of the inputs. The manufacturer has availed input credit and used the same for payment of duty. Refund of duty paid through modvat would be, in effect, refund of duty paid on inputs. The inputs are dutiable and hence the question of refund of duty paid on inputs does not arise."

4. The assessee/appellant, aggrieved by the said order of the Commissioner (Appeals), filed an appeal to the Tribunal. However, when the case was taken up by the Tribunal, none appeared on behalf of the assessee despite notice and, therefore, the Tribunal, on going through the order of the Commissioner (Appeals), confirmed the order and rejected the appeal. Aggrieved against the order of the Tribunal, the appellant is before this Court by filing the present appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the 2nd respondent.

6. We have perused the facts as has been recorded by the Original Authority and the Commissioner (Appeals). Here is a case where the appellant seeks refund of duty paid through Modvat. The final products, admittedly, are not dutiable and, therefore, the benefit of Modvat credit is also not available in respect of inputs as per the provisions of the Modvat at the relevant point of time. There is no provision in the MODVAT, which provides for refund of duty paid on inputs. In such circumstances, the authorities below had rejected the claim of the assessee, which action was confirmed by the Tribunal. This Court is in full agreement with the said view. In view of the concurrent finding of fact and law by the authorities below, we find no reason to differ.

7. Yet another fact pointed out and not denied by the appellant is that as against the original proceedings in a case of refund, where part of the amount was allowed to be refunded, the Department raised an objection, which was sustained before the Commissioner (Appeals) and in the appeal preferred by the assessee before this Court in CMA No. 562/06, the entire claim for refund was dismissed by order dated 29.11.2013 on the ground of limitation. This Court, in the said case, held as under :-

"4. After hearing the learned Counsel for the parties and perusing the materials placed on record, it has to be pointed out that in order to maintain a claim for refund in terms of Section 11-B of the Central Excise Act, 1944, any person claiming refund of any duty of excise and interest, if any, paid on such duty, may make an application for refund of such duty and interest before the expiry of six months from the relevant date, in the manner prescribed and the application should be accompanied by such documents or other evidence to establish that the duty of excise has been paid. Second Proviso to Section 11-B(1) provides that the limitation of six months shall not apply where any duty of excise has been paid under protest. On the facts noted above, admittedly, the appellant is not entitled to the benefit of Second Proviso to Section 11-B(1). The relevant date for the purpose of this case, is the one as defined under Section 11-B(5) Explanation (B) (e), which states that the relevant date shall be, in the case of a person other than the manufacturer, the date of purchase of goods by such person. Thus, the definition of relevant date clearly stares against the case of the appellant and as rightly held by the Tribunal, the claim for refund is only barred by limitation. Accordingly, no ground is made out to interfere with the order passed by the Tribunal."

8. In such view of this matter, this Court finds no reason to take a view different from the one taken by the Tribunal. In any event, nothing survives for adjudication in the matter in view of the judgment in C.M.A.No. 562 of 2006 dated 29.11.2013 and, therefore, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered in favour of the Revenue and against the appellant/assessee.

9. Finding no merits warranting interference with the order of the Tribunal, the appeal is dismissed. However, there shall be no order as to costs.