

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.03.2015

Coram

The Honourable **Mr.Justice R.SUDHAKAR**

and

The Honourable **Mr.Justice R.KARUPPIAH**

Civil Miscellaneous Appeal Nos.3662 to 3664 of 2008
& M.P.Nos.1, 1 and 1 of 2008

The Commissioner of Central Excise,
Chennai IV Commissionerate,
692, MHU Complex,
Nandanam, Chennai – 600 035.

... Appellant

-vs-

1. Customs Excise & Service Tax,
Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
First Floor, 26, Haddows Road,
Chennai – 600 006.

2. M/s.Sivaramakrishna Forgings Pvt. Ltd.,
No.125, SIDCO Industrial Estate,
Thirumudivakkam, Chennai - 600 044.

... Respondents

Civil Miscellaneous Appeals filed under Section 35G of Central Excise Act, 1944 against the final order passed in Order No.1026 to 1028/2007 dated 17.08.2007 on the file of Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-6.

For Appellant : Mr.P.Mahadevan

For Respondents : Mr.S.Murugappan (R2)

COMMON JUDGMENT

(Delivered by R.SUDHAKAR,J.)

These Civil Miscellaneous Appeals are filed by the Revenue as against the order of the Tribunal raising the following substantial question of law:

"1. Whether in the facts and circumstances of the case, the first respondent Appellate Tribunal is right in holding that the second respondent is entitled to Cenvat credit on the capital goods/inputs used in the manufacture of goods which are exempted and which are cleared without payment of duty on Job work basis?

2. The brief facts of the case are as follows:

During the periods in dispute, the assessee had manufactured machine forgings on job work basis and supplied the same to the principal manufacturers without payment of duty. The assessee were also manufacturing similar goods on their and the same were cleared on payment of duty to independent buyers. In such duty payments, the assessee utilized Cenvat credit on capital goods and inputs which were used in the manufacture of the job-worked goods, which was

objected to by the Department. Hence show cause notice was issued alleging that as the inputs have been used in the manufacture of final products which were cleared without payment of duty, any cenvat credit of the duty paid on such inputs would not be available. The Adjudicating Authority sustained the allegations and ordered recovery of the cenvat credits in question. On appeal, at the instance of the assessee, the Commissioner (Appeals) upheld the order of the Adjudicating Authority, against which appeal has been filed before the Tribunal by the assessee. The Tribunal, by following the decision rendered in CCE Chennai V. Ucal Machine Tools Ltd., reported in 2006-TIOL-76-Cestat-Mad allowed the appeal holding that the said decision of the Tribunal was accepted by the Department. In so holding the Tribunal also held that the machine forgings (job-worked goods) cleared by the assessee to the principal manufacturer during the periods of dispute, without payment of duty, were not to be treated as "goods exempted from duty of excise or chargeable to 'nil' rate of duty" so as to attract the bar created under Rule 6(1) of the CENVAT Credit Rules, 2004. Aggrieved by the said order of the Tribunal, the present appeals have been filed by the Revenue raising the question of law mentioned supra.

3. Both sides fairly conceded before this Court that the issue involved in these appeals are decided by this Court in C.M.A.No.1490 of 2008 dated 06.12.2013 reported in **2014 (9) TMI 444 (Commissioner Versus Hwashin Automotive India Pvt. Ltd.)**, wherein by following the unreported decision, similar question raised by the Revenue was answered against the Revenue.

4. In the decision reported in **2014 (9) TMI 444 (Commissioner Versus Hwashin Automotive India Pvt. Ltd.)**, while dealing with the similar question of law, this Court held as follows:

*"The learned counsel appearing for the second respondent produced before this Court an unreported decision in C.M.A.No.1568 of 2006 dated 18.07.2013, wherein a similar question raised by the Revenue was answered against the Revenue following the decisions of the Bombay High Court reported in **2009 (244) E.L.T. A89 - Commissioner v. Sterlite Industries (I) Limited** as well as the Punjab and Haryana High Court reported in **2012 (26) STR 488 - Commissioner of Central Excise, Ludhiana v. Jainsons Wool Coomers Ltd.**, which were based on the decision of the Apex Court reported in **2004 (171) E.L.T. 145 - Escorts Limited v. Commissioner of Central Excise, Delhi.***

3. Following the said decision, the questions raised in this appeal stand answered against the Revenue."

5. Following the above-said decision of this Court, the above Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected Miscellaneous Petitions are also dismissed.

[R.S.,J] [R.K.,J]
20.03.2015

Index:Yes/No
Internet:Yes/No
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To
The Customs Excise & Service Tax
Appellate Tribunal,
South Zonal Bench,
Shastri Bhawan Annexe,
First Floor, 26, Haddows Road,
Chennai – 600 006.

**R.SUDHAKAR,J.
AND
R.KARUPPIAH,J.**

SI

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