

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal Nos.588 to 592 of 2018

The Commissioner of Central GST & Central Excise,
Chennai Outer, Newry Towers,
No.2054, I Block, II Avenue,
Anna Nagar, Chennai – 600 040. ...Appellant in all appeals

Vs

M/s.Sujana Metal Products Ltd.,
No.204/3-B, Manjakaranai Village,
Periapalayam Road,
Thiruvallur – 601201. ...Respondent in
C.M.A.No.588/2018

M/s.Endeavour Industries Ltd.,
505A NT Road, Balakrishnapuram,
Gummidipoondi,
Thiruvallur – 601201. ...Respondent in
C.M.A.No.589/2018

M/s.Victoria Steel Enterprises Ltd.,
Room No.6, Aishwarya Complex,
GNT Road, Tathchoor Road,
Ponneri, Thiruvallur – 601201. ...Respondent in
C.M.A.No.590/2018

M/s.Futuretech Industries Ltd.,
Sathyasai Complex,
3/185, Kavaraipetti,
Thiruvallur – 601201.

...Respondent in
C.M.A.No.591/2018

Sujana Metal Products Ltd.,
No.204/3-B, Manjakaranai Village,
Periapalayam Road,
Thiruvallur – 601201.

...Respondent in
C.M.A.No.592/2018

Civil Miscellaneous Appeals filed under Section 35G of Central Excise Act, 1944 against the impugned order of the Hon'ble Tribunal in Final Order Nos.40015 to 40020 of 2016 dated 05.01.2016 on the file of the Customs, Excise & Service Tax Appellate Tribunal, Chennai.

For Appellant
in all appeals : Mr.A.P.Srinivas
Senior Standing Counsel

For Respondent
in all appeals : Mr.G.Natarajan

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam,J)

सत्यमेव जयते

These appeals filed by the revenue under Section 35G of the Central Excise Tax, 1944 [hereinafter referred to as “CST Act”] are directed against the common order dated 05.01.2016 made in Final Order Nos.40015-40020/2016 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai ['the Tribunal' for brevity].

2.The appeals have been admitted on 12.04.2018 on the following substantial questions of law:

“1.Whether the CESTAT is correct in reducing the penalty levied under Rule 15(1) of the CENVAT Credit Rules, 2004?

2.Whether the CESTAT is correct in reducing the penalty imposed under Rule 26(2) (i) & (ii) of the Central Excise Rules, 2002, when no discretion is provided in the said Rule?

3.Whether the CESTAT is correct in upholding the order of Adjudicating Authority and thereby holding that the ineligible CENVAT Credit taken by the assessee is not required to be reversed, when Rule 14 of the CENVAT Credit Rules, 2004 mandates the same?”

3.We have elaborately heard Mr.A.P.Srinivas, learned Senior Standing Counsel appearing for the appellant/revenue and Mr.G.Natarajan, learned counsel appearing for the respondent/assessee.

4.Substantial Questions of Law Nos.1 and 2 are interconnected and interlaced. The issue is whether the Tribunal was justified in interfering with the order-in-original and reducing the penalty levied by the

adjudicating authority. The following table will show the details of the penalty imposed and the reduced penalty as ordered by the Tribunal in the impugned order:

S.No.	Appeal No.	Appellants	Penalty Imposed (Rs.)	Penalty Reduced to (Rs.)
1.	E/102/2010	Sujana Metal Products Ltd.	1,00,00,000/- under Rule 15(i) of CCR 2004	25,00,000/- (Rupees Twenty Five Lakhs only)
2.	E/105/2010	M/s.Victoria Steel Enterprises Ltd.	80,00,000/- Rule 26(2)(i)(ii) of CER 2002	20,00,000/- (Rupees Twenty Lakhs only)
3.	E/106/2010	M/s.Future Tech Industries Ltd.	50,00,000/- Rule 26(2)(i)(ii) of CER 2002	12,50,000/- (Rupees Twelve Lakhs Fifty thousand only)
4.	E/103/2010	M/s.Endeavour Industries Ltd.	50,00,000/- Rule 26(2)(i)(ii) of CER 2002	12,50,000/- (Rupees Twelve Lakhs Fifty thousand only)

5.The question would be whether the Tribunal was justified in reducing the penalty. We have carefully examined the factual position and we are of the clear view that the transaction is a 'circular transaction'. It may be a fact that the four entities, namely, M/s.Endeavour Industries Limited, M/s.Future Tech Industries Limited, M/s.Victoria Steel Enterprises Limited and M/s.Sujana Metal Products Limited though have availed credit, did not utilize the credit to discharge any of their liability. There is another

entity, namely, M/s.Omnicon Bio-Genesis Industries Ltd., on which penalty of Rs.2 lakhs was imposed by the original authority, but the Tribunal did not interfere with the said amount and no reduction was made. Therefore, the revenue has not preferred any appeal against the said assessee. It is no doubt true that the Tribunal has got discretionary power to interfere with the order of the adjudicating authority in the matter of reduction of the quantum of penalty which has been imposed by the adjudicating authority. But, however the exercise of discretion should be with sound reasons and cannot be arbitrary or whimsical. On perusal of paragraph 9 of the impugned order passed by the Tribunal, we find that the Tribunal has not assigned any acceptable reasons as to why the penalty imposed on M/s.Endeavour Industries Limited should be reduced from Rs.50 lakhs to Rs.12.50 lakhs, on M/s.Future Tech Industries Limited should be reduced from Rs.50,00,000/- to Rs.12,50,000/-, on M/s.Victoria Steel Enterprises Limited should be reduced from Rs.80,00,000/- to Rs.20,00,000/- and on M/s.Sujana Steel Products Ltd., should be reduced from Rs.1 Crore to Rs.25,00,000/-.

The only finding that the Tribunal has recorded in paragraph 9 of the impugned order is that apparently there is no revenue loss to the Department.

6.We do not agree with the said submission for more than one reason.

Firstly, the availment of credit by the five entities, namely, M/s.Endeavour Industries Limited, M/s.Future Tech Industries Limited, M/s.Victoria Steel Enterprises Limited, M/s.Omnicon Bio-Genesis Industries Ltd. and M/s.Sujana Metal Products Limited was not authorized and illegal because this credit was based on invoices without actual movement of goods. It may be a fact that those five entities have not utilized the credit to discharge their duty burden in respect of other transaction. But that cannot be the reason for reduction of the penalty, especially when the amount which was availed as credit remained with the five entities over a period of time until it was reversed. Apart from that, the Tribunal would say that there is no revenue loss because M/s.Sujana Metal Products Limited have reversed the credit, that can hardly be a mitigating factor for reduction of penalty on the five entities because those entities were well aware that the transaction was a 'circular transaction' and credit was availed on invoices without movement of goods. Therefore, the exercise of discretion by the Tribunal for reduction of penalty is perverse and unsustainable and accordingly, the same is set aside. Consequently, Substantial Questions of law Nos.1 and 2 are answered in favour of the revenue.

7. With regard to the Substantial Question of law No.3 is concerned, the adjudicating authority has gone into the facts and has dropped the proposal for recovery of CENVAT credit from M/s.Sujana Metal Products Limited. The correctness of this decision was tested by the Tribunal and the finding is in paragraph 11 which we quote herein below:

“11. As far as the Revenue's appeal, pleading for demanding cenvat credit taken by the main appellant, we find that issue is well dealt by the adjudicating authority in his findings this circular chain of bill trading transaction initiated by SMPL by using/adopting actual credit balance of Rs.8,21,75,995/- available in their RS-23A and RG-23D account and created cenvatable invoices to three dealers mentioned above. The initial credit debited by SMPL is not under dispute and the department had admitted that appellant had sufficient balance of credit in their accounts which is clearly confirmed by the Superintendent's letter dated 17.11.2009 and 22.11.2009. Though the appellants have created the documents by way of issuing documents and subsequently taking the credit without receipt of the goods, the appellants at the first instance have paid the duty by debiting the cenvat account which was again

taken back by above paper transaction. Therefore, we do not find any infirmity in the order of adjudicating authority in so far as regularizing the credit and dropping of recovery of credit. Accordingly, the Revenue's appeal is rejected.”

8.Thus the factual position being that M/s.Sujana Metal Products Limited having already reversed the credit of Rs.8,21,75,955/-, once more to call upon them to reverse an equivalent amount would not be permissible in law. Thus, we confirm the finding rendered by the Tribunal in paragraph 11 of the impugned order. Consequently, Substantial Question of law No.3 is answered against the revenue.

9.In the result, the appeals are partly allowed, substantial questions of law Nos.1 and 2 are answered in favour of the revenue and substantial question of law No.3 is answered against the revenue. No costs.

WEB COPY (T.S.S.,J.) (R.N.M.,J.)
18.02.2021

Index: Yes/No
Internet: Yes/No
Speaking Judgment/Non speaking Judgment
cse

To

1. Customs, Excise & Service Tax
Appellate Tribunal,
South Zonal Bench, Chennai

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Chennai Outer, Newry Towers,
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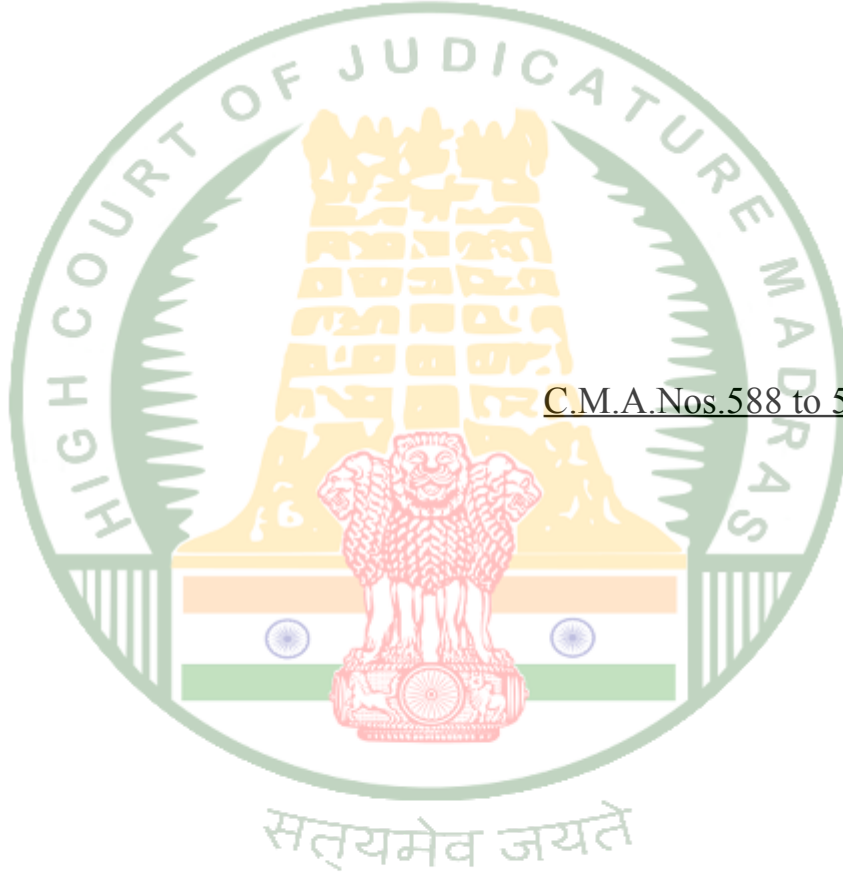


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