IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

E/00297 & 00393/2007

[Arising out of Order-in-Original No.4/2007, dated 28.02.2007 passed by the Commissioner of Central Excise, Chennai8]

M/s. S.S.D. OIL MILLS CO. LTD. APPELLANT
COMMISSIONER OF CENTRAL EXCISE, CHENNAI-IV

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENNAI-IV RESPONDENT
M/s. S.S.D. OIL MILLS CO. LTD.

Appearance:

For the Assessee Ms. Ragini, Adv.
For the Revenue Shri L. Paneerselvan, AC (AR)

CORAM:

Hon'ble Smt. C.S. Sulekha Beevi, Member (Judicial)
Hon'be Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing/decision **25-04-2017**

FINAL ORDER NO.: 40646 - 40647/2017

Per C.S. Sulekha Beevi:

The issue involved in both these appeals being the same are heard together and disposed by this common order. The parties are referred to as "assessee" and "department" for the sake of convenience.

2. The assessee is engaged in the manufacture of dutiable products viz., refined oil, vanaspathi, bakery shortening agent and exempted margarine and are registered with the Central Excise department. They were not maintaining separate accounts for the common inputs used in the manufacture of exempted and dutiable products. Show-cause notice was issued demanding payment

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of Rs.84,73,543/- 8% being of the value of the exempted products cleared by the assessee for the period May,'03 to Apr.'04 in terms of Rule 6(3)(b) of Cenvat Credit Rules, 2002. After due process of law, the learned Commissioner accepted the contention of the assessee that they have reversed the entire credit availed on exempted as well as dutiable products to the tune of Rs.16,72,651/-. However, the learned Commissioner confirmed the demand of interest and also imposed penalty of Rs.2,00,000/-.

3. Being aggrieved by the demand of interest as well as imposition of penalty, the assessee has filed Appeal No.E/00297/2007, while the department has filed Appeal No.E/00393/2007 against the order passed by the learned Commissioner accepting the reversal of credit by the asseseee.

4. Heard both sides and perused the records.

5. The issue involved is as to whether the assessee is required to reverse 8% of the value of the exempted goods, when the assessee has already reversed the credit availed on the inputs used for manufacture of exempted products. The said issue has been finalized and set to rest by the judgment rendered by the jurisdictional High Court in the case of Commissioner of *Central Excise, Puducherry Vs CESTAT, Chennai* reported in *2015 (323) E.L.T. 323 (Mad.)*. The learned Authorised Representative has relied upon the judgment in the case of *Commissioner of Central Excise, Coimbatore Vs CESTAT, Chennai* reported in *2013 (294) E.L.T.372 (Mad.)*. We find that the said judgment is rendered in Rule 57CC (9) of the erstwhile Central Excise Rules, 1944. The judgment relied upon by learned counsel for the appellant squarely covers the issue in hand and, therefore, it is

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applicable. Following the ratio laid down by the said judgment, we hold that the demand of interest and penalty is unsustainable. Therefore, the impugned order is modified to the extent of setting aside the demand of interest and penalty imposed in Appeal No.E/00297/2007 filed by the assessee is allowed with consequential reliefs if any. Accordingly, the Appeal No.E/00393/2007 filed by the department is dismissed.

(Dictated and pronounced in open court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

(C.S. SULEKHA BEEVI)
MEMBER (JUDICIAL)

ksr
27-04-2017

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चेन्नै/Chennai

Customs, Excise & Service Tax Appellate Tribunal