CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench
Court - I

Appeal No. E/950/2009

(Arising out of Order-in-Original No.10/2009-CE-HYD III ADJN. Commr. Dated 21.07.2009 passed by CCCE & ST, Hyderabad-III)

Vinayak Steels Ltd ….. Appellant(s)

Vs.

CCCE & ST, Hyderabad - III ….. Respondent(s)

Appearance
Ms. Swetha, Advocate for the Appellant.
Shri P.S. Reddy, Asst. Commissioner/AR for the Respondent.

Coram:
HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 23.10.2018
Date of Decision: 23.10.2018

FINAL ORDER No. A/31396/2018

[Order per: M.V.Ravindran.]

1. This appeal is directed against Order-in-Original No. 10/2009-CE-HYD III ADJN. Commr. dated 27.07.2009.

2. Heard both sides and perused the records.

3. On perusal of records, it transpires that the adjudicating authority confirmed the demand of an amount equivalent to 8% or 10% of the value of the goods cleared to SEZ developer on the ground that said goods were cleared by claiming an exemption and appellant having not maintained separate records for manufacturing exempted goods is liable to pay the said amount. The lower authority has recorded findings that SEZ developer cannot be equated with SEZ unit. Learned counsel was correct in brining to notice that the issue is no more *res integra* and as decided by Hon'ble High

Court of AP in the case of Sujana Metal Products Ltd, wherein after analyzing Cenvat Credit Rules and SEZ Act, the Tribunal in Para 13 has held as under:

> *"13. From the above, the following emerges.*
>
> *a. For the period upto 9-2-2005, the supplies made to SEZ units are to be treated as export both for extending export benefits and for levy of duty in terms of SEZ provisions contained in Chapter XA of the Customs Act.*
>
> *b. For the period from 10-2-2006, the definition of the term "export" under the Customs Act is not consistent with the definition of the term "export" under the SEZ Act. However, the definition of the term "export" under the SEZ Act shall prevail over the definition of term "export" under the Customs Act. Therefore, supplies made to SEZ from DTA units shall be treated as export.*
>
> *c. Since both during the period prior to and w.e.f. 10-2-2006, the supplies made to SEZ are held to be "export", the application of provisions of Cenvat Credit Rules for recovery of amounts on goods supplied to SEZ units in terms of Rule 6 of CCR, 2002/CCR, 2004 does not arise.*
>
> *d. The amendment to Rule 6(1) of the CCR, 2004 by the amending Notification No. 50/2008-C.E. (N.T.), dated 31-12-2008 shall be applicable w.e.f. 10-9-2004 when the CCR, 2004 came into existence and, therefore, exception provided under Rule 6(6) of Cenvat Credit Rules, 2004 shall be applicable to supply of exempted goods both to SEZ units and SEZ developers/promoters.*
>
> *e. Appeals of the assessees deserve to be allowed and the appeals of the Department deserve to be rejected.*
>
> *f. Incidentally, in the facts and circumstances of the case, the question of invoking extended period of limitation for demand of amounts and imposition of penalties does not arise."*

4. Revenue authorities were aggrieved by the order of the Tribunal and preferred an appeal before the Hon'ble High Court of AP and Telangana and the said appeal 40/2012 as reported at Commissioner Vs Sujana Metal Products Ltd [2016 (342) ELT A115 (AP)].

5. Since the issue is already settled by the Hon'ble High Court and which is in favour of the appellant, we hold that impugned order is unsustainable and liable to be set aside and we do so.

6. The impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in the open Court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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