Commissioner of Central Excise, Hyderabad

v.

Associated Cement Companies Limited

(Supreme Court Of India)

(Y.K. SABHARWAL D.M. DHARMADHIKARI and TARUN CHATTERJEE)

Review Petition (Civil) No. 1172 Of 2003 In Civil Appeal No. 2355 Of 2000 | 08-12-2004

1. This review petition has been filed by the Commissioner of Central Excise seeking review of the order dated 28-11-2002 (CCE v. Associated Cement Companies Ltd., 2003 (9) SCC 74) passed by this Court in Civil Appeal No. 2355 of 2000.

2. The challenge in the said appeal filed by the Commissioner of Central Excise was to the judgment and order dated 8-9-1999 passed by the Customs, Excise and Gold (Control) Appellate Tribunal, whereby the Tribunal allowed the appeal of the assessee holding that in previous decisions rendered by the Tribunal, it was decided that MODVAT credit is available on high speed diesel oil used as fuel for generation of electricity which in turn is used for running cement plant. By the order of which review is sought, it was held that the Tribunal was fully justified in arriving at the conclusion that the assessee was entitled to get the benefit of the notification till Rule 57-B was amended.

3. By this petition it has been pleaded that inadvertently the attention of the Court was not drawn to the provisions of Section 112 of the Finance Act, 2000. Section 112 reads as under:

"112. Validation of the denial of credit of duty paid on high speed diesel oil.

(1) Notwithstanding anything contained in any rule of the Central Excise Rules, 1944, no credit of any duty paid on high speed diesel oil at any time during the period commencing on and from the 16th day of March, 1995 and ending with

the day, the Finance Act, 2000 receives the assent of the President, shall be deemed to be admissible.

(2) Any action taken or anything done or purported to have been taken or done at any time during the said period under the Central Excise Act or any rules made thereunder to deny the credit of any duty in respect of high speed diesel oil, and also to disallow such credit to be utilised for payment of any kind of duty on any excisable goods shall be deemed to be, and to always have been, for all purposes, as validity and effectively taken or done, as if the provisions of sub-section (1) had been in force at all material times and, accordingly, notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority-

(a) no suit or other proceedings shall be maintained or continued in any court, tribunal or other authority for allowing the credit of the duty paid on high speed diesel oil and no enforcement shall be made by any court, tribunal or other authority of any decree or order allowing such credit of duty as if the provisions of sub-section (1) had been in force at all material times;

(b) recovery shall be made of all the credit of duly, which have been taken or utilised but which would not have been allowed to be taken or utilised, if the provisions of sub-section (1) had been in force at all material times, within a period of thirty days from the date on which the Finance Act, 2000 receives the assent of the President and in the event of non-payment of such credit of duty within this period, in addition to the amount of credit of such duty recoverable, interest at the rate of twenty-four per cent per annum shall be payable, from the date immediately after the expiry of the said period of thirty days till the date of payment.

Explanation.-For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force."

4. A bare reading of sub-section (1) of Section 112 shows that no credit is admissible on any duty paid on high speed diesel oil at any time during the

period commencing on and from the 16th day of March, 1995 and ending with the day the Finance Act, 2000 received the assent of the President. The President gave assent on 1-4-2000. It is not in dispute that the period in question comes under the purview of Section 112(1). The contention (that Rule 57-B was not amended is of no avail since the aforesaid provision provides that notwithstanding anything contained in the Rules, the credit is not admissible. As Section 112 was not brought to the notice of the Court, the appeal of the Revenue was dismissed. In view of this statutory provision, the appeal of the Revenue could not have been dismissed since the assessee was not entitled to get the benefit of Rule 57-B.

5. Though the assessee is not entitled to the benefit as aforesaid, yet we cannot ignore the fact that the aforesaid amendment came into force on 1st April, 2000 when the order of the Tribunal dated 8-9-1999, in favour of the assessee was holding the field and it is being set aside today by this order. In this view, the time to make payment under Section 112(2)(b) has to commence only from today. Further, having regard to the facts and circumstances of the case, it would be appropriate to set aside the penalty of Rs.50,000 imposed on the assessee by the Assistant Commissioner in the order dated 22-9-1998.

6. Before parting, we may also note that a submission was sought to be made by the learned counsel for the assessee challenging the constitutional validity of Section 112 of the Finance Act but in this appeal, we cannot permit such a contention to be raised. As and when a petition is filed challenging the validity of the provision, it would, of course, be dealt with in accordance with law.

7. For the aforesaid reasons, we allow the review petition. The order dated 28-11-2002 is recalled. Civil Appeal No. 2355 of 2000 is allowed. The order of the Tribunal dated 8-9-1999 is set aside and that of the Assessing Commissioner is restored subject to the aforesaid direction regarding deletion of imposition of penalty and the time for payment of interest.