

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CEA No. 109 of 2014 (O&M)

Date of Decision: 09.08.2016

Commissioner of Central Excise

.....Appellant

Versus

M/s Dee Development Engineers Pvt. Ltd.

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Anshuman Chopra, Advocate
for the appellant.

Mr. Jagmohan Bansal, Advocate
for the respondent.

RAJESH BINDAL, J.

The revenue is in appeal against the order dated 26.2.2013 passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi, against the order passed in appeal No. 25/CE/App1/DLH-IV/22011 dated 31.3.2011, raising the following substantial questions of law:

1. Whether the Hon'ble CESTAT was right in holding the supplies made from DTA unit to SEZ developer/promoter as 'exports' entitled for the exceptions provided under Rule 6 (6) of the CENVAT Credit Rule 2004?
2. Whether the Tribunal was right in applying the overriding effect of Section 51 of the SEZ Act, 2005 to hold the impugned goods as "exports" and at the same time ignoring the provisions of (c) of sub section (1) of Section 26 of SEZ Act, according to which the supplies by domestic units to the units in SEZs/ Developers of SEZ are exempted from payment of Central Excise

Duties?

3. Whether the Hon'ble CESTAT was correct in holding that the amendment to Rule 6(6)(i) of Cenvat Credit Rules, 2004 vide Notification No.50/2008 CE (N.T) dated: 31.12.2008 shall be applicable with retrospective effect, when the Ministry/Board vide its Circular No. 267/52/2008-CX dated: 07.01.2009 has clarified that the amendment is prospective in nature and would apply to supplies cleared from the date of the notification only?

At the very outset, it was not disputed by learned counsel for the parties that identical issue was gone into by three different High Courts in “Commissioner of Central Excise & Customs, Raipur Vs. M/s Steel Authority of India Ltd., Bhilai Steel Plant, Bhilai, 2013-TIOL-384-HC-Chattisgarh-CX by Chattisgarh High Court, which was followed by Andhra Pradesh High Court in CEA No. 40 of 2012, The Commissioner of Customs & Central Excise, Hyderabad Vs. M/s Sujana Metal Products Ltd., decided on 02.07.2013 and further followed by Karnataka High Court in Commr. Of C. Ex. & S.T. Bangalore Versus Fosroc Chemicals (India) Pvt. Ltd. 2015 (318) E.L.T. 240 (Kar.), and the issue was decided against the revenue and in favour of the assesseees.

As the issue raised in the present appeal has already been gone into by three different High Courts and the opinion expressed is against the revenue, for the reasons assigned in those judgments, we deem it appropriate to follow the same to maintain consistency as the Central Excise

Act is a Central Statute. Accordingly no substantial question of law arises.

The appeal is accordingly dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

09.08.2016
reema

Whether speaking/reasoned Yes/No

Whether Reportable: Yes/No