IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 09.04.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI

C.M.A. NO. 2035 OF 2008
AND
C.M.A. NO. 1599 OF 2010

The Commissioner of Central Excise
Pondicherry Commissionerate
Goubert Avenue, Beach Road
Pondicherry 605 001. .. Appellant in CMA 2035/2008/Respondent

The Commissioner of Central Excise
Coimbatore. .. Appellant in CMA 1599/2010/Respondent

- Vs -

1. Customs, Excise & Service Tax Appellate Tribunal
Chennai, South Regional Bench
Chennai 600 006.

2. M/s.Nagammai Cotton Mills (P) Ltd.
Vikkaravandi, Villupuram. .. Respondents in CMA 2035/2008/ Applicant

3. M/s.Premier Polyweaves (P) Ltd.
244, A.T.D. Street
Race Course, Coimbatore 641 018... Respondent in CMA 1599/2010/ Applicant

C.M.A. No.2035/08 filed under Section 35-G of the Central Excise Act against the order dated 7.12.07 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1464/2007.

C.M.A. No.1599/2010 filed under Section 35-G of the Central Excise Act against the order dated 9.10.09 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1419/2009.

For Appellant : Mr. K.Mohanamurali Senior Penal Counsel in CMA 2035/08
Mr.K.Ravi Ananthapadmanabhan in CMA 1599/2010

For Respondents: Mr. Jaikumar in CMA 2035/2008
Mr. T.Ramesh in CMA 1599/2010

COMMON JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the respective appeals filed by the assessee, the Revenue/appellant is before this Court by filing the present appeals.

2. While admitting the appeals, this Court framed the following substantial questions of law for consideration in the respective appeals :-

"CMA No.2035/08

1. Whether the first respondent is correct in disregarding the Board circular No.345/4/2005 TRV dated 03.10.2005 while deciding the appeals when it has been held by the Apex Court and other High Courts that the interpretation of the Central Board of Excise and Customs will be binding upon the Revenue?

2. Whether the Tribunal is justified in ignoring the words 'the person liable for paying service tax does not manufacture final products appearing in the explanation to Rule 2 (p) of the CENVAT Credit Rules according to which the GTA service cannot be termed as 'Output Service'?"

CMA No.1599/10

1. Whether the Hon'ble Tribunal is right on relying on its own decisions passed in the case of India Cements Ltd. - Vs - CCE, Salem (2007 (7) STR 569) and R.R.D. Tex Pvt. Ltd. - Vs - CCE, Salem (2007 (8) STR 186) as a finality has not reached and the cited judgments has been challenged by the department and appeal has been filed against them?

2. Whether the Tribunal is right in not considering that the assessee had not provided any 'output services' and had received services during the disputed period and they are not entitled to utilise input service tax credit for payment of service tax on Goods Transport Agency Services availed in connection with removal of final product from their factory as per Rule 2 (p) of the Cenvat Credit Rules, 2004?"

3. The case of the respective respondent/assessee is that they filed ST-3 Returns for the respective periods and, thereafter, utilised the cenvat credit so accrued for payment of service tax and education cess respectively in relation to freight for inward movement of goods received by them. However, after due process of law, the adjudicating authority as well as the Commissioner (Appeals) held against the assessee confirming the demand along with interest inasmuch as the assessees have not discharged the duty liability as

envisaged under the Act and the Rules. Against the said order, the appeals preferred by the respective assessees were allowed by the Tribunal against which the Revenue is before this Court by filing the present appeals.

4. Though the appeals have been admitted on two substantial questions of law, at the time of hearing the main appeals, this Court felt that the second substantial question of law alone requires to be considered in both the appeals, which was fairly accepted by the learned counsel on either side. Accordingly, this Court is considering only the second substantial question of law in both the appeals.

5. It is brought to the notice of this Court by the learned counsel appearing for the parties that similar question has been considered by this Court in the case of Commissioner of Central Excise, Salem - Vs - M/s.Cheran Spinners Ltd. (CMA No.894 of 2008 dated 5.7.2013) and the issue has been answered against the Revenue and in favour of the Assessee. It is submitted that the cases on hand is squarely covered by the decision in Cheran Spinnner's case (supra).

6. In view of the said statement made by the learned counsel on either side that the ratio laid down in Cheran Spinner's case (supra), is equally applicable to the cases on hand, following the said ratio, these appeals are also liable to be dismissed. Accordingly, the second substantial question of law is answered in favour of the respective assessee/respondent and against the Revenue/appellant.

7. Accordingly, these civil miscellaneous appeals fail and the same are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Commissioner of Central Excise
Pondicherry Commissionerate
Goubert Avenue, Beach Road
Pondicherry 605 001.

2. The Commissioner of Central Excise
Coimbatore.

3. Customs, Excise & Service
    Tax Appellate Tribunal
    Chennai, South Zonal Bench
    Chennai 600 006.

4. The Section Officer,
   V.R.Section, High Court, Madras.

+1 cc to Mr.T.Ramesh, Advocate,SR.19564

+1 cc to Mr.K.Mohanamurali, Advocate,SR.19554.

+1 cc to Mr.S.Jaikumar, Advocate,SR.19527.

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C.M.A. NO. 2035 OF 2008
AND
C.M.A. NO. 1599 OF 2010