IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 18.06.2015

CORAM

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

C.M.A. NO. 2369 OF 2010

The Commissioner of Central Excise
No.1, Foulks Compound
Anaimedu, Salem 636 001. .. Appellant

- Vs -

Maruthamalai Murugan Industries Pvt. Ltd.
Ingur, Perunthurai
Erode 638 058. .. Respondent

Civil Miscellaneous Appeal filed under Section 35-G of the Central Excise Act against the order dated 10.11.09 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.1674/2009.

For Appellant : Mr. Vikram Ramakrishnan

For Respondents: No Appearance

JUDGMENT
(DELIVERED BY R.SUDHAKAR, J.)

Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal. This Court, vide order dated 1.10.2010 admitted the appeal on the following substantial questions of law :-

"a) Whether on the facts and circumstances of the case, the Tribunal is right in not considering the Board's circular No.345/4/2005 TRU dated 3.10.2005 which is binding on the Department?

b) Whether the Tribunal is right in holding that the respondent did not provide any taxable service though they did manufacture an excisable product?

c) Whether on the facts and circumstances of the case the Tribunal is right in not considering the above explanation, the Goods Transport Agency Service so received by the respondent would have been covered under the definition of "input service" under Rule 2 (f) of Cenvat Credit Rules? By virtue of the explanation it shall be deemed to be "output service" even after deletion of the explanation given in Rule 2

(p) read with the definition given in Rule 2 (q) and (r) convey similar meaning?"

2. The respondent assessee is engaged in the manufacture of yarn falling under Chapter 52 and 55 of the Central Excise Tariff Act. During the period from 1.8.05 to 31.3.06, the respondent had paid service tax on GTA services through their cenvat credit account. It is the case of the respondent/assessee that for the materials/inputs received goods carriers, they pay the freight charges. For the said inputs received by road, the respondent is entitled to adjust the service tax paid on inward transportation of raw materials and, therefore, it is entitled to adjust the Cenvat credit earned towards payment of service tax on the use of Goods Transport Service. However, after due process of law, the adjudicating authority 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. However, on appeal by the assessee, the said order was reversed by the Commissioner (Appeals) in favour of the assessee. Against the said order, the Department preferred appeal, which was by the Tribunal against which the Revenue is before this Court by filing the present appeal.

4. Heard the learned standing counsel appearing for appellant/Department. Inspite of service of notice, there is no representation on behalf of the assessee/respondent. This Court perused the materials available on record.

5. When the matter was taken up for hearing, it is fairly conceded by the learned standing counsel appearing for the Revenue that similar question has been considered by this Court in the case of Commissioner of Central Excise, Salem - Vs - M/s.Cheran Spinners Ltd. (2014 (33) STR 148 (Mad.)) and the issue has been answered against the Revenue and in favour of the assessee. It is submitted that the case 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 standing counsel for the appellant/Department that the ratio laid down in Cheran Spinner's case (supra), is equally applicable to the case on hand, following the said ratio, this appeal is liable to be dismissed. Accordingly, the third substantial question of law is answered in favour of the assessee/respondent and against the Revenue/appellant.

7. Accordingly, the civil miscellaneous appeal fails and the same is 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
   No.1, Foulks Compound
   Anaimedu, Salem 636 001.

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

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