

In the High Court of Judicature at Madras

Date : 03.07.2015

Coram :

The Hon'ble Mr. Justice R. Sudhakar
and
The Hon'ble Ms. Justice K.B.K.VASUKI

C.M.A. No. 2562 of 2010

The Commissioner of Central Excise
Chennai II Commissionerate
No: 692 MHU Complex
Anna Salai, Nandanam
Chennai - 600 035.

... Appellant/Appellant

-vs-

1. M/s. Indian Furniture Products Ltd.
G-106 SIDCO Industrial Estate
Kakkalur, Thiruvallur - 602 003. ... Ist Respondent/Respondent
2. The Customs, Excise and Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annex, 1st floor
No: 26 Haddows Road
Chennai - 600 006. .. 2nd Respondent

Appeal filed under Section 35-G of the Central Excise Act, 1944 against the order dated 28.04.2010 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai Bench, Chennai, and made in Final Order No. 483/2010 against the Order of the Commissioner of Central Excise (Appeals) Chennai dated 13.4.2009 and made in Order in Appeal No.110/2009(M-II) against the Order of the Asst.Commissioner of Central Excise, Chennai V Division Chennai -II, Commissionerate, Chennai dated 18.5.2007 and made in Order-in-Original No.37/2007.

For Appellant : Mr. S. Xavier Felix

For Ist Respondents : No Appearance

J U D G M E N T

(Judgment of the Court was
delivered by R. Sudhakar, J.)

Aggrieved by the order passed by the Tribunal in rejecting the appeal filed by it, the Revenue/appellant is before this Court by filing the present appeal. This appeal was admitted by this Court, on 23.12.2010, on the following substantial questions of law :-

" 1. Whether on the facts and circumstances of the case, the Tribunal is right in law in confirming the order of the Commissioner (Appeals) dated 13.04.2009 holding that the credit of Service Tax paid on travels for transportation of their Staff for pick up and drop from residence to factory be allowed ? and

2. Whether on the facts and circumstances of the case, the Tribunal is right in law in relying on the decision reported in the case of Commissioner of Central Excise, Nasik vs. Cable Corporation of India Ltd. - 2008 (12) STR 598, and CCE, Jaipur - II vs. JK Cement Works - reported in (TIOL - 8411) which has been appealed and pending before the High Court ? "

2. The 1st respondent / assessee are manufacturers of Ready to Assemble Furniture falling under CHSH 9403 60 00 of Central Excise Tariff Act, 1985 and are having Central Excise Registration No: AAACZ0306PXM001. The assessee was availing Cenvat Credit including input Service Tax credit. The assessee had engaged various travels for transportation of their staff for pick up and drop from residences to the factory premises during the period from February 2006 to December 2006 and have availed input Service Tax credit to the tune of Rs. 92,901/- + Education Cess Rs. 1,857/-. Similarly, the assessee had availed input service tax credit to the extent of Rs. 64,077/- + Education Cess of Rs. 1,281/- during the period from September 2006 to December 2006 on the bills of telephones (attached to office) / Insurance policy (Health Insurance) / Group Personal Accident Charges paid. It appears that the services availed on the bills of Telephones (attached to the office) / Insurance Policy (Health Insurance) / Group Personal Accident were not connected with the manufacturing activities and the Service Tax credit availed as input service credit on the above services did not appear to be in order and appeared to be recoverable. Thus, a show cause notice was issued directing the assessee to show cause as to why an amount of Rs.1,60,116/- (service tax credit Rs.92,901/-) + 64077/-) + Edu. Cess (i.e. 1857/- + 1281/-) being the wrong availment of Service Tax Credit should not be recovered from them under Rule 14 of Cenvat Credit Rules 2004 read with Section 11 A of CEA 1944. After due process of law, the Order in Original No: 37 of 2007 dated 18.05.2007 came to be passed demanding a sum of Rs.1,60,116/- (service tax credit of Rs.92,901/- + Rs. 64,077/-) Edu. Cess (i.e. 1,857/- + 1281).

3. Challenging the said order, the assessee approached the Commissioner (Appeals). By his Order-in-Appeal No. 110/2009 dt. 13.04.2009, the Commissioner (Appeals) disposed of the appeal by allowing the credit of service tax paid to Travels for Transportation of their staff for pick up and drop from residence to the factory premises and on Telephone (attached to the office) charges and denied the credit taken on service tax paid on Insurance Police (Health Insurance) / Group Personal Accident Charges.

4. Against the said order, the department preferred appeal to the Tribunal. Since the Tribunal rejected the appeal, the appellant/Department has preferred the present appeal.

5. In similar cases of this nature, the learned counsel appearing for the assessee raised a preliminary objection as to the maintainability of the case of the appellant contending that the appellant ought not to have filed the appeal in view of the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC, wherein the following instruction has been issued :-

"5. The Board has decided that appeals in the Tribunal shall not be filed where the duty involved or the total revenue including fine and penalty is Rs.1 Lakh and below. Similarly, in the case of High Courts, appeals should not be filed in cases where the duty involved or total revenue including fine or penalty is Rs.2 Lakhs and below. While deciding the thresholds mentioned above the duty involved shall be the decisive element. For example, in a case involving duty of Rs.1 Lakh with mandatory penalty of Rs.1 Lakh besides any other penalty imposed under the relevant provisions of Law, no appeal shall henceforth be filed in the Tribunal as the duty involved is within the monetary limit of Rs.1 Lakh. Similarly, if the duty involved in a case is Rs.2 Lakhs with equal mandatory penalty and any other penalty imposed under the Law in force at the relevant time, no appeal shall be filed before the High Court."

6. In view of the above instruction it is clear that, for preferring an appeal, monetary limit is fixed and only if the monetary limit exceeds Rs.2 Lakhs, appeal can be filed. Since the monetary limit in the present case, even as per the order of the Commissioner (Appeals) is well within the limit of Rs.2 Lakhs, the present appeal, filed by the Department, is not maintainable.

7. Heard the learned standing counsel appearing for the appellant/Department and perused the materials available on record.

8. Even though this appeal is filed to consider the above question of law, referred to supra, we are not inclined to entertain this appeal in view of the fact that the monetary limit to prefer an appeal is pegged at Rs.2,00,000/- by the litigation policy of the Government issued by the Ministry of Finance, Department of Revenue, Central Board of Excise & Customs vide Instructions dated 20.10.2010 in F.No.390/Misc./163/2010-JC.

9. It is seen from the records that the Order-in-Original came to be passed demanding a sum of Rs.1,60,116/- (service tax credit of Rs.92,901/- + Rs. 64,077/-) Edu. Cess (i.e. 1,857/- + 1281). The monetary limit for filing an appeal having been fixed at Rs.2 Lakhs, even as per the order of the original authority, the demand of tax, interest and penalty being less than Rs.2 Lakhs, the appeal is not maintainable.

10. The above said circular issued by the Board is squarely applicable to the facts of the present case and, therefore, this Court is not inclined to entertain this appeal. Accordingly, without going into the merits of the questions of law raised, in the light of the Board's circular mentioned supra, this appeal is dismissed as not maintainable. However, there shall be no order as to the costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1.The Asst.Registrar,
Customs, Excise and Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annex, 1st floor
No: 26 Haddows Road
Chennai - 600 006.

2.The Commissioner of Central Excise (Appeals)
26/1, Mahathma Gandhi Road, Chennai -34.

3.The Commissioner of Central Excise, Chennai-II Commissionerate,
NO.692, MHU Complex, Anna Salai, Chennai -35.

4.The Asst.Commissioner of Central Excise,
Chennai-V Division, Chennai-II Commissionerate,
NO.692, MHU Complex, Anna Salai, Chennai -35.

1 cc to Mr. C.Saravanan, Advocate Sr.No.33261

C.M.A. No. 2562 of 2010

gr (co)
pmk.26.8.2015