In the High Court of Judicature at Madras

Date :: 11.06.20015

Coram ::

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

C.M.A. No: 2792 of 2008

The Commissioner of Central Excise
Central Excise Commissionerate
No: 1, Williams Road
Tiruchirapalli - 620 001. ... Appellant

-vs-

1. M/s. MMS Steels Ltd.
Melavanjore, Karaikkal
Puducherry Union Territory.

2. Customs, Excise and Service
Tax Appellate Tribunal,
Shastri Bhavan Annex
No: 26 Haddows Road
Chennai - 600 006. ... Respondents

.. .. ..

Civil Miscellaneous Appeal under Section 35 G of the Central Excise Act, 1944 against Final Order No: 750 of 2007 dated 22.06.2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai - 6.

For appellant :: M/s. Sekina Reshma

For respondents :: Mr. S. Muthu Venkataraman for M/s. S. Jaikumar

.. .. ..

J U D G M E N T
(Judgment of the Court was 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 18.09.2008 admitted the appeal on the following substantial question of law :-

" Whether in terms of the Explanation to Rule 2 (p) of the Cenvat Credit Rules, 2004, the Goods Transport Agency Service received by a manufacturer of final products, can be deemed an “output service" provided by him in order to urilize the credit taken by such manufacturer on the input service and inputs for discharging service tax liability in relation to the said Goods Transport Agency service ? "

2. The case of the respondent/assessee is 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. Since the assessee has not actually provided any output service, the department was of the view that it cannot utilize the input credit for payment of service tax. Therefore, a show cause notice was issued calling upon the assessee to pay the tax which was wrongly availed through utilisationo f credit. After due process of law, the adjudicating authority passed the order confirming the demand, which was confirmed by 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 appeal preferred by the assessees was allowed by the Tribunal against which the Revenue is before this Court by filing the present appeal.

3. When this appeal is taken up for hearing, 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 case on hand is squarely covered by the decision in Cheran Spinnner's case (supra).

4. 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 case on hand, following the said ratio, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered in favour of the assessee/respondent and against the Revenue/appellant.

5. 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 the costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.Customs, Excise and Service
Tax Appellate Tribunal,
Shastri Bhavan Annex
No: 26 Haddows Road
Chennai - 600 006.

2.The Commissioner of Central Excise,
Central Excise Commissionerate,
No 1 William Road, Trichy.

+1 cc to Mr.S.Jaikumar, Advocate,SR.28331

+1 cc to Mr.RK.Sekina, Reshma, Advocate,SR.28721.

Lrs(co)
krd 6/7

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