IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 23.04.2015

CORAM

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

C.M.A. NO. 3381 OF 2009

The Commissioner of Central Excise
Central Excise Commissionerate
No.1, Williams Road, Cantonment
Tiruchirappalli 620 001. ...Appellant

- Vs -

1. M/s.Karur KCP Packagings Ltd.
Mayanur.

2. Customs, Excise & Service
Tax Appellate Tribunal
South Zonal Bench
Shastri Bhavan Annexe I Floor
26, Haddows Road
Chennai 600 006. ...Respondent

Appeal filed under Section 35-G of the Central Excise Act against the order dated 30.12.2008 passed by the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai, made in Final Order No.04/09.

For Appellant : Mr. T.Chandrasekaran

For Respondent : Mr. A.K.Jayaraj for R-1

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 17.12.09, while admitting the appeal, framed the following substantial questions of law :-

> "1. Whether the Goods Transport Agency service received by a manufacturer of final products as a consignor/consignee, for which he is made the person liable for paying service tax under Section 68(2) of the Finance Act, 1994, can be deemed in terms of the Explanation to Rule 2 (p) of the Cenvat Credit Rules, 2004 as an 'output service' provided by him when the said explanation specifically excludes from its scope a person liable for paying service tax if he manufactures final products?
>
> 2. Whether the credit taken by such manufacturer on the input service used in the final products could be utilised for discharging service tax liability as a person liable for paying service tax in relation to the said Goods Transport Agency service received by them on claiming the GTA Service as an output service in terms of the above Explanation to Rule 2 (p) of the Cenvat Credit Rules, 2004?

2. The case of the respondent/assessee is that they filed ST-3 Returns 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 it. However, after due process of law, the adjudicating authority as well as the Commissioner (Appeals) held against the assessee upholding the order of the adjudicating authority. Against the said order, the appeal preferred by the assessee was allowed by the Tribunal against which the Revenue is before this Court by filing the present appeal.

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

4. 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).

5. 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, these appeals are also liable to be dismissed. Accordingly, the substantial questions of law are answered in favour of the assessee/respondent and against the Revenue/appellant.

6. Accordingly, this 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(CS-III)

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Commissioner of Central Excise
Central Excise Commissionerate
No.1, Williams Road, Cantonment
Tiruchirappalli 620 001.

2. Customs, Excise & Service
Tax Appellate Tribunal, South Zonal Bench
Shastri Bhavan Annexe I Floor
26, Haddows Road, Chennai 600 006.

1 CC to Mr. A.K.Jayaraj, Advocate SR.No. 22661

1 CC to Mr. T.Chandrasekaran, Advocate SR.No. 22197

C.M.A. NO. 3381 OF 2009

KU (CO)
PSI (14.05.2015)