

In the High Court of Judicature at Madras

Dated: 27.01.2015

Coram

The Honourable Mr.JUSTICE R.SUDHAKAR
and

The Honourable Mr.JUSTICE R.KARUPPIAH

Civil Miscellaneous Appeal Nos.599, 2511, 2512,
2711 of 2007 and 2332 of 2009

E.I.D.Parry India Limited,
rep. by its senior Executive
Mr.R.Gopakumar
No.25, Gandhi Road,
Ranipet, Vellore District

..... Appellant in C.M.A.No.599 of 2007

E.I.D.Parry India Limited,
rep. by its senior Executive
Mr.R.Gopakumar
Dare House, 4th Floor,
NSC Bose Road, Chennai - 600 001.

..... Appellant in C.M.A.Nos.2511 & 2512 of 2007

E.I.D.Parry (India) Limited,
rep. by its Senior Manager (Taxation)
Mr.Simachal Mohanty
Dare House, 4th Floor,
NSC Bose Road, Chennai - 600 001.

..... Appellant in C.M.A.No.2711 of 2007

E.I.D.Parry (India) Limited,
rep. by its Deputy Manager (Taxation)
Ms.R.Rajeswari
Dare House, 4th Floor,
NSC Bose Road, Chennai - 600 001.

..... Appellant in C.M.A.No.2332 of 2009

Vs.

1. Customs Excise and Service Tax
Appellate Tribunal,
Sashtri Bhavan Annexe
26, Haddows Road, Chennai - 600 006.

..... 1st Respondents in the above CMAs

2. The Commissioner of Central Excise (Appeals),
Office of the Commissioner of Central Excise (Appeals),
No.26/1, Mahatma Gandhi Road,
Chennai - 600 034.
..... 2nd Respondent in C.M.A.Nos.599, 2511,
2512,2711 of 2007
2. The Commissioner of Central Excise (Appeals),
Office of the Commissioner of Customs & Central Excise (Appeals),
No.1, Williams Road, Cantonment,
Tiruchirappalli.
..... 2nd Respondent in C.M.A.No.2332 of
2009
3. The Assistant Commissioner of Central Excise,
Ranipet Division, Sipcot Industrial Complex,
Ranipet - 632 403, Vellore District.
..... 3rd Respondent in C.M.A.No.599 of 2007
3. The Deputy Commissioner of Central Excise,
Office of the Deputy Commissioner of Central Excise,
No.1, Vallalar Nagar, Manjakuppam,
Cuddalore - 607 001.
..... 3rd Respondent in C.M.A.Nos.2511, 2512 & 2711 of 2007
3. The Assistant Commissioner of Central Excise
Office of the Commissioner of Central Excise,
No.1, Williams Road, Cantonment,
Tiruchirappalli.
.....3rd Respondent in C.M.A.No.2332 of
2009

APPEALS filed under Section 35G of the Central Excise Act, 1994 read with Section 83 of the Finance Act, 1994 against the order dated 30.8.2006, 06.12.2006, 06.12.2006, 18.05.2007 and 04.12.2008 made in Final Order No.823 of 2006, 1266 of 2006, 1267 of 2006, 608 of 2007 and 1374 of 2008 respectively on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.S.Muthuvenkataraman
For Respondents : Mr.T.Chandrasekaran
Standing Counsel -R2 & R3

WEB COPY
COMMON JUDGMENT

(Delivered by R.SUDHAKAR,J.)

The above Civil Miscellaneous Appeals filed by the assessee as against the Final Orders of the Customs, Excise and Service Tax Appellate Tribunal, Chennai were admitted by this Court on the following substantial questions of law:

"C.M.A.No.599 of 2007:

1. Whether the Tribunal is right in holding that the judgment of the Supreme Court in the case of L.H.Sugar Factory is not applicable to the present case of the appellant?

2. Whether the Tribunal is right in ignoring the fact that the demands are time barred and when the same was not covered by the tenet of the retrospective validation?

C.M.A.Nos.2511 & 2512 of 2007:

(a) Whether the Tribunal is right in discriminating between the appellant and other similarly placed assesses?

(b) Whether the Tribunal is right in ignoring the fact that the demands are time barred and when the same was not covered by the tenet of the retrospective validation?

(c) Whether the Tribunal is right in holding that the judgment of the Supreme Court in the case of L.H.Sugar Factory is not applicable to the present case of the appellant?"

C.M.A.No.2711 of 2007:

(1) Whether the Tribunal is right in dismissing the appeal filed by the appellants for refund of duty paid on service tax under protest?

(2) Whether the Tribunal is right in discriminating between the appellants and other similarly placed assesseees?

(3) Whether the Tribunal is right in ignoring the fact that the demands are time barred and when the same was not covered by the tenet of the retrospective validation?

(c) Whether the Tribunal is right in holding that the judgment of the Supreme Court in the case of L.H.Sugar Factory is not applicable to the present case of the appellant?"

C.M.A.No.2332 of 2009:

(1) Whether the Tribunal is right in dismissing the appeal filed by the appellants for refund of duty paid on service tax under protest?

(2) Whether the Tribunal is right in discriminating between the appellants and other similarly placed assesseees?

(3) Whether the Tribunal is right in ignoring the fact that the demands are time barred and when the same was not covered by the tenet of the retrospective validation?

2. The brief facts are as follows:

The appellant/assessee is engaged in the manufacture of sanitaryware Sugar, Molasses, Denatured spirit etc. They availed the services of Goods Transport Operator during different periods between 1997 and 1999. The goods transport service was brought under service tax with effect from 16.11.1997. There was a wide protest by the transporters for levy of service tax and the same was challenged before the Supreme Court. The Supreme Court in the case of Laghu Udyog Bharati Vs. Union of India reported in 1999 (112) ELT 365 (SC) struck down the provisions of Service Tax Rules, thereby making the service receiver liable to pay service tax. Consequently, amendments were brought to Finance Act, 2000, whereby the service receiver was liable to pay service tax. The said amendment was challenged and the Supreme Court in the case of Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608 upheld the said amendment.

3, In the present case, the assessee paid the service tax under protest and claimed refund, which was rejected by the Original Authority. On appeal preferred by the assessee, the Commissioner (Appeals) allowed the same, but the Tribunal, on the appeal filed by the Revenue, restored the order of the Original Authority declining to grant refund.

4. The Tribunal, in this case, had clearly held that in view of the decision in the case of Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608, the question of refund does not arise. The Tribunal also came to hold that it is of no avail for the assessee to pay the tax under protest. As the return was filed in terms of the statutory provisions, it is deemed to be voluntary payment of tax, more so, in a case of self-assessment.

5. Aggrieved by the orders of the Tribunal the assessee is before this Court.

6. Heard learned counsel appearing for the assessee and the learned standing counsel appearing for the Revenue and perused the materials placed before this Court.

7. The issue involved in these appeals has been considered by the Division Bench of this Court in the case of Commissioner of

Central Excise v. Customs, Excise and Service Tax Appellate Tribunal and another (C.M.A.Nos.1308 of 2009 batch dated 31.10.2013). This Court after following several decisions of the Supreme Court including the decision in the case of Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608 held that the demand raised by the Revenue on the users, who received the service of the Goods Transport Operators, was valid.

8. Following the above-said decision of this Court in the case of Commissioner of Central Excise v. Customs, Excise and Service Tax Appellate Tribunal and another (C.M.A.Nos.1308 of 2009 batch dated 31.10.2013), this Court in C.M.A.No.1322 of 2009 dated 4.9.2014 held that the show cause notices issued by the Revenue on the assessee, who received the services of the Goods Transport Operators, was valid.

9. In the present case, the assessee had paid the service tax and claimed refund. Hence, the only issue that arise for consideration in the above appeals is whether the appellant is entitled for refund of the service tax already paid.

10. It is seen that in the case of Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608, the Supreme Court upheld the validity of the levy of service tax on users of services rendered by Goods Transport Operators. The Supreme Court, while dealing with the legislative competency of the levy of service tax on users of services rendered by goods transport operators, held as follows:

"23. As we have said, Rule 2(1)(d) (xii) and (xvii) had been held to be illegal in *Laghu Udhog Bharati* only because the charging provisions of the Act provided otherwise. Now that the charging section itself has been amended so as to make the provisions of the Act and the Rules compatible, the criticism of the earlier law upheld by this Court can no longer be availed of. There is thus no question of the Finance Act, 2000 overruling the decision of this Court in *Laghu Udhog Bharati* as the law itself has been changed. A legislature is competent to remove infirmities retrospectively and make any imposition of tax declared invalid, valid. This has been the uniform approach of this Court. Such exercise in validation must of course also be legislatively competent and legally sustainable. Those issues are considered separately. On the first question, we hold that the law must be taken as having always been as is now brought about by the Finance Act, 2000. The statutory foundation for the decision in *Laghu Udhog Bharati* has been replaced and the decision has thereby ceased to be relevant for the purposes of construing the present provisions (vide *Ujagar Prints vs. Union of India*)."

11. From a reading of the above-said decision of the Supreme Court and that of this Court, it is clear that the users of the service rendered by the Goods Transport Operators are liable to pay service tax. In the present case, the appellant is using the services of the Goods Transport Operators during different periods between 1997 to 1999. Hence, the appellant is liable to pay service tax. Since the appellant has already paid the service tax, as per the law laid down by the Supreme Court in the case of Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608, the question of refund will not arise and the appellant is not entitled for refund. Hence, the Tribunal is justified in confirming the order of the Original Authority declining to grant refund.

12. Accordingly, following the above-said decision of the Supreme Court Gujarat Ambuja Cements Ltd. V. Union of India reported in 2006 (3) S.T.R. 608 and the decisions of this Court in the case of Commissioner of Central Excise v. Customs, Excise and Service Tax Appellate Tribunal and another (C.M.A.Nos.1308 of 2009 batch dated 31.10.2013) and in the case of The Commissioner of Central Excise, Puducherry V. Customs, Excise and Service Tax Appellate Tribunal and another (C.M.A.No.1322 of 2009 dated 04.09.2014), the substantial questions of law admitted by this Court are answered against the assessee and in favour of the Revenue.

13. In the result, all the above Civil Miscellaneous Appeals are dismissed. No costs.

sl

-s/d-

Deputy Registrar(J)

Dt:10/2/2015

True Copy

Sub-Assistant Registrar

To

The Customs, Excise and Service Tax Appellate Tribunal, Chennai.

+1 cc to Mr.T.Chandrasekaran, Sr.Central Govt. Standing Counsel SR 3993

+ 1 cc to Mr.G.RM.Palaniappan, Advocate SR 3960

+ 1 cc to Mr.K.Ravi Anantha Padmanaban, Sr.Standing Counsel for
Central Excise SR 4160

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