IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.252 OF 2014

Commissioner of Central Excise,
Customs & Service Tax, Vapi ... Appellant
versus
M/s.S.V.Jiwani, Naroli, Silvassa. ... Respondent

Mr.Suhas M. Oak for Appellant.

Mr.Vikram Nankani, Senior Advocate, with Mr.Triveni Jani i/by M/s.Markand Gandhi & Co. for Respondent.

CORAM : S.C.DHARMADHIKARI AND
G.S.PATEL, JJ.

DATE : 01 February 2016

PC :

1. We have heard both sides. Mr.Oak, learned advocate for the Revenue, in support of this appeal, which arises out of Customs Excise and Service Tax Appellate Tribunal, West Zonal Bench, Ahmedabad's order dated 17 March 2014 submits that all the questions which have been formulated at pages 3 and 4, are substantial questions of law and therefore, the appeal be entertained.

2. In a endeavour to find out as to whether this Court really is required to go into these questions, we have heard both learned counsel at some length.

3. The essential facts from paragraph 2.1 of the memo of appeal are undisputed. The assessee is termed to be a service provider in the category of "works contract service, construction service in respect of commercial or industrial Building structures, transport of goods by road". The assessee holds excise registration in its favour and a service tax registration as well. One M/s.Classic Marble Impex Pvt.Ltd. engaged the assessee for providing services e.g. construction of industrial building, setting up of plant and factory and infrastructure thereof. The assessee availed of CENVAT credit under the provisions of CENVAT Credit Rules, 2004. The memo of appeal narrates that the assessee assessed the tax due on the services provided and furnished their returns. They were scrutinized. It is undisputed that they paid full service tax @ 12.36%. However, Revenue noted that CENVAT credit has been availed of on inputs and input services. Therefore, the assessee was summoned, his statement was recorded and some relevant documents were called for.

4. Then, there is a reference to an option provided by Rule 2A of the Service Tax (Determination of Values) Rules, 2006. The assessee did not adopt any or above options but

claimed that having paid the service tax in full, the input credit can be availed of and that is how the Revenue thought that this was not permissible. After the entire exercise of the adjudicating authority was over and the Tribunal was called upon to do it again, it was discovered that really there was no revenue loss.

5. To a question whether input service credit could have been availed of in terms of the options provided or after discharging the liability in full the CENVAT credit can be claimed or not, eventually we find an agreed answer that Revenue is not put to a loss. The tax liability has been discharged in full. If it is the conceded position and emerging from the records, then we should not undertake an academic exercise. In the light of various observations and findings rendered on the interpretation of the Rule 2A and Section 67 of the Finance Act, 1994, we are of the view that a scrutiny thereof can be undertaken in an appropriate case meaning thereby that the exercise of satisfying ourselves whether these findings and conclusions are sustainable in the light of the language of the rule and the substantive provision, is something which need not detain us in this case. By clarifying that all such issues as are raised in the present appeal and the substantial questions of law, can be gone into in appropriate case where Revenue has sustained any loss or there is evasion of tax, we dispose of this appeal.

6. By keeping all contentions of both sides on the substantial questions of law open, we dispose of this appeal.

(G.S.PATEL, J.) (S.C.DHARMADHIKARI, J.)

MST