IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.08.2016

C O R A M :

The Honourable Mr.Justice S.Manikumar
and
The Honourable Mr.Justice D.Krishnakumar

Civil Miscellaneous Appeal No.1165 of 2016

M/s. Alkraft Thermotechnologies Pvt. Ltd.,
No.35-A & B1
Ambattur Industrial Estate
Chennai - 600 058. ... Appellant

Vs.

1. The Commissioner of Central Excise
Chennai-II Commissionerate
26/1, Mahatma Gandhi Marg
Nungambakkam
Chennai - 600 034.

2. The Deputy Commissioner of Central Excise
Chennai-II Division
R-40, A-1 Mogappair East
Chennai - 600 037. ... Respondents

Prayer: Appeal filed under Section 35G of Central Excise Act, 1944 to set aside the impugned final order No.40360 of 2016 dated 02.02.2016 in Appeal No. E/40569/2014-SM passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai and allow this appeal with consequential relief and pass further orders.

For appellant : Mr. C. Saravanan

For respondents : Mr. A.P. Srinivas,
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was made by S. Manikumar,J)

Final orders passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai, dated 02.02.2016 in No.40360 of 2016, is impugned before us.

2. Short facts leading to the appeal are that M/s. Alkraft Thermotechnologies Pvt. Ltd., the appellant herein, has been served with two show cause notices No. 25/2010 dated 06.10.2010 and 26/2010 dated 11.10.2010 respectively. A joint adjudication was done, which culminated into an order in Original No.02/2011 dated 15.03.2011, wherein, Cenvat credit on service tax paid on Goods Transport Agency services has been denied. Being aggrieved, M/s.Alkraft Thermotechnologies Pvt. Ltd., preferred an appeal to the Commissioner (Appeals). Appeal was rejected vide an Order-in-Appeal No.6/2014 dated 07.01.2014. Challenging the same, a further appeal was preferred before CESTAT, Chennai.

3. Before CESTAT, Chennai, the appellant raised several issues. Before the Tribunal, learned counsel appearing for the respective appellants have agreed that if the following two questions are answered, that would serve the purpose of filing the appeals before the Tribunal, as a common issue and all other issues may be left open, to be decided by adjudicating authority in the respective appeals. Material on record discloses that the following two questions have been raised and answered by the Tribunal :-

i. Whether the goods cleared at the factory gate, depot or any other place of removal, (the expression of which is defined in Section 4(3) of the Central Excise Act, 1944) and delivered such goods at the port of export shall entitle the appellants to the Cenvat credit of the service tax paid on transportation of such goods from any of the above places or such tax refundable under Rule 5 of the Cenvat Credit Rules, 2004 wherever the Cenvat credit is not adjustable ? and

ii. Whether Cenvat Credit is admissible in respect of service tax paid on transportation of the goods cleared from the places in question ?

4. After hearing, learned counsel for the parties and upon perusing the material on record, vide final Order No. 40353 to 40379 of 2016 dated 02.02.2016, CESTAT, Chennai has answered

the issues and remanded the matters back to the Original Authority. Appellant is one of the parties before CESTAT. Being aggrieved by the final order No.40353 to 40379 of 2016 in E/40443/2014-SM etc. dated 02.02.2016, instant Civil Miscellaneous Appeal is filed and was admitted, on the following questions of law, for determination:-

(1) Whether the impugned final order of the Hon'ble Tribunal is sustainable or not in ignoring appellant's plea regarding availability of credit on service tax paid on transportation charges/ freight of inward transportation goods into its other factories at Rudrapur in the State of Uttarkhand and Jamshedpur in the State of Jharkhand ?

(2) Whether on facts and law input service tax credit paid input services within the meaning of Rule 2(1) of the Cenvat Credit Rule, 2004 can be denied ?

(3) Whether service tax paid on its inward transportation of goods from one factory to another factory of the same manufacturer can be denied or not ?

5. Before this Court, submission has been made that the issue as to whether Cenvat credit on service tax paid on transportation charges (inward transportation) from factory to its own factories situated in the State of Uttarkhand and Assam, has not been dealt with, by the Tribunal. According to Mr. C. Saravanan, learned counsel for the appellant, demand to the extent of Rs.3,70,552/- has been answered by the Tribunal, while the issue relating to stock transfer to the appellant's own factory to an amount of Rs.1,33,837/-, has not been considered by the Tribunal.

6. Per contra, Mr. A.P. Srinivas, learned Senior Standing Counsel for the Revenue supported the impugned orders and prayed to sustain the same.

7. We have gone through the material on record, including the order impugned. The Tribunal has decided the case, based on the Board's Circular No.97/8/2007-ST, dated 23.08.2007. One of the grounds urged before us, assailing the impugned order of the Tribunal, is that the appellant is only a recipient of services and that there is no sale, but only transfer to its own units.

8. Going through the material on record, we are of the view that the issue as to whether Cenvat credit on service tax paid on transportation charges from the appellant's factory

to other units referred to above i.e. factories of the appellant (inward transportation) can be availed by the appellant, has to be decided by the adjudicating authority. We have already recorded the consent of the appellants before the Tribunal, for adjudication of the two questions of law only and the other issues are left open for the decision of the adjudicating authority. In the light of the above, on questions 1, 2 and 3, raised in the instant appeal, the Original Authority has to frame proper issues, adjudicate by providing an opportunity of hearing as contemplated under the Central Excise Act 1944 and the Rules framed thereunder and pass appropriate orders on merits, in accordance with law, within a period of two months from the date of receipt of a copy of this order. While deciding the matter on merits, it is open to the Adjudicating Authority, to consider as to whether adherence to the Tribunal's order is required, on law and facts.

9. Accordingly, the Civil Miscellaneous Appeal is disposed of.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1. The Commissioner of Central Excise
Chennai-II Commissionerate
26/1, Mahatma Gandhi Marg
Nungambakkam
Chennai - 600 034.

2. The Deputy Commissioner of Central Excise
Chennai-II Division
R-40, A-1 Mogappair East
Chennai - 600 037.
3. The Section Officer
VR Section High Court Madras

+1 cc to Mr.C.Saravanan Advocate sr47984
+1 cc to Mr.A.P.Srinivas advocate sr 47879

C.M.A. No.1165 of 2016

aa26/08/2016