IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 08.12.2016

CORAM

THE HON'BLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Civil Miscellaneous Appeal No.3185 of 2010

M/s. IP Rings Limited
No.D11/12, Industrial Estate
Maraimalai Nagar
Kancheepuram District. .. Appellant

Vs.

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

2. The Commissioner of Central Excise
Chennai III Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai 600 034. .. Respondents

Appeal under Section 35G of the Central Excise Act, 1994, against the order dated 18.6.2010 made in Final Order No.651/2010 on the file of the Customs, Excise and Service Tax Appellate Tribunal, allowing the appeal against the order dated 16.9.2008 made in Order-in-Appeal No.65/2008(M-III) on the file of the Commissioner of Central Excise (Appeals), Chennai.

For Appellant : Ms.Cynduja Crishnan
For Mr.Muthuvenkataraman

For Respondent-2: Mr.A.P.Srinivas, Standing Counsel

J U D G M E N T
(Delivered by Dr.Anita Sumanth,J)

The assessee has challenged order dated 18.6.2010 in Final Order No.651/2010 on the file of the Customs, Excise and Service Tax Appellate Tribunal.

2. The assessee has been denied the credit of service tax paid on catering services on the ground that the same is not used in or in relation to the manufacture of the finished excisable goods in its factory.

3. The above appeal was admitted on 03.12.2010, on the following substantial questions of law:

> "(1) Whether the learned single Member is at liberty to disagree with the views expressed by the Larger Bench of the Tribunal, which is apparently in conflict with the judgment of the Supreme Court in the case of Jindal by Intermedia Limited vs. Collector of Customs, Mumbai reported in 2006 (197) ELT 471 (SC)?
>
> (2) Whether the first respondent Tribunal is right in disagreeing with the speaking order recently passed by the Larger Bench in the case of GTC Industries, which is against the principles laid down by Supreme Court in its judgment in the case of Kamalakshmi Finance reported in 55 ELT 433?
>
> (3) Whether the outdoor caterer providing refreshment to the employees of the appellants is eligible to be an input services used by the manufacturer, directly or indirectly, in or in relation to the manufacture of final products?
>
> (4) Whether the manufacturer is entitled to take Cenvat credit of service tax paid to their outdoor caterer providing food in the factory premises to their employees as input service as decided by the Larger Bench in the case of GTC Industries? and
>
> (5) Whether the first respondent Tribunal is right in allowing the appeal filed by the Revenue on the ground that the outdoor catering services is not eligible to input services as per Cenvat Credit Rules, which is in total disregard of the judgment of the Larger Bench in the case of GTC Industries and that of the Bombay High Court judgment in the case of Coca Cola India Private Limited?"

4. The issue in this appeal stands decided in favour of the assessee by two decisions of this Court in The Commissioner of Central Excise v. M/s. Borg Warner Morse Tec Murugappa Pvt Ltd [2015 TIOL 831 HC MAD CX] and The Commissioner of Central Excise v. M/s. Visteon Powertrain Control Systems (P) Ltd. [2015 TIOL 580 HC MAD CX].

5. Accordingly, the questions are answered in favour of the assessee and against the revenue. The appeal stands allowed. It is made clear that the cost of food borne by the worker should not be taken into consideration for the purpose of grant of credit of service tax. No costs. Consequently, M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpl

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
Chennai III Commissionerate
No.26/1, Mahatma Gandhi Road
Chennai 600 034.

+1cc to Mr.A.P. Srinivas, Advocate, S.R.No.72482

mu(CO)
rs(09/01/2017)