IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2016

C O R A M

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal Nos.3124 and 3125 of 2008

The Commissioner of Central Excise
Pondicherry Commissionerate
Goubert Avenue
Beach Road
Pondicherry 605 001. ... Appellant in both the Appeals/Respondent

Vs

1. Customs, Excise and Service Tax Appellate Tribunal
Chennai, South Regional Bench
Chennai 600 006.

2. M/s. CMS (India) Operations & Maintenance Company P. Ltd
Uthangal 607 604
Vridhachalam Taluk. ... Respondents in both the Appeals/Appellants

Prayer: Appeals filed under Section 35 G of Central Excise Act, 1944 against Final Order Nos.614 and 615 of 2007 dated 21/5/2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Southern Regional Bench, Chennai 600 006 against the Order of the Commissioner of Central Excise(Appeals) 26/1, Mahatma Gandhi Road, Chennai 600 034 in Appeal No.126 of 2005 (P)(ST) dated 26.12.2005.

For appellant : Mr.K.Mohana Murali

For respondents : Mr.J.Shankar Ram for Mr.R.Venkatavaradan for R.2

R.1 - Tribunal

C O M M O N   J U D G M E N T

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

These Appeals have been filed against the order of the Customs, Excise and Service Tax Appellate Tribunal, Chennai, dated 21/5/2007.

2. The common substantial questions of law raised in these appeals are:-

> "1. Whether Tribunal, by recourse to the general meaning of the term "Service" and decisions rendered in the context of other legislations, is right in holding that the second respondent did not render composite services bearing the essential characters of taxable service of Maintenance and Repair, Business Auxillary Services, Management Consultancy, Consulting Engineering Services and C & F Agents stipulated under Section 65 A (2) (b) of Finance Act, 1994?
>
> (ii). Whether the Tribunal is right in holding that the second respondent is the manufacturer of Electricity, contrary to the fact that ST-CMS is the manufacturer of Electricity as evident in the Power Purchase Agreement between the TNEB and ST-CMS and in extension of the Notification No.08/2005-ST dated 1/3/2005 amended by Notification No.19/2005-ST dated 1/3/2005, accordingly, exempting service tax on the Business Auxicillary Service of manufacture of goods on behalf of clients even for the Service Tax liable to be paid by the second respondent for the manufacture of electricity on behalf of ST-CMS for the period prior to 1/3/2005?"

3. Inviting the attention of this Court to the contentious issues and the findings recorded by the Statutory authorities and Customs, Excise and Service Tax Appellate Tribunal, Madras and Section 35-G of the Central Excise Act, 1944, Mr.J.Shankar Raman for Mr.R.Venkatavaradan, learned counsel for the second respondent, made a preliminary objection to the maintainability of the instant appeals and contended that an appeal against the order of the Tribunal would lie to the High Court, if only such order does not relate, among other things, to the determination

of any question having a relation to the right of duty of excise or to the value of goods for purposes of assessment. He also submitted that in a matter involving duty, relatable to classification, the order of Customs, Excise and Service Tax Appellate Tribunal, Madras, cannot be challenged in High Court and that the revenue has to file an appeal directly to the Hon'ble Supreme Court, under Section 35-L of the Central Excise Act, 1944. Thus, the learned counsel appearing for the second respondent raised a preliminary objection to the maintainability of the instant appeals.

4. On the objections as to the maintainability of instant appeals, we have heard Mr.K.Mohana Murali, learned counsel for the Commissioner of Central Excise, who invited the attention of this Court, to the relevant paragraphs of the impugned order of Customs, Excise and Service Tax Appellate Tribunal, Madras, dealing with contentious issues relating to the rate of duty and classification. He prayed to sustain the orders.

5. Section 35 - G of the Central Excise Act, 1944 reads as follows:-

> "Appeal to High Court - (1) An appeal shall like to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if High Court is satisfied that the case involves a substantial question of law."

6. Section 35 - L of the Central Excise Act, 1944, reads as follows:-

> "Appeal to Supreme Court - (1) An appeal shall lie to the Supreme Court from
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> (a) any judgment of the High Court delivered -
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> (i). in an appeal made under Section 35-G; or
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> (ii). On a reference made under Section 35-G by the Appellate Tribunal before the 1st day of July, 2003;
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> (iii). On a reference made under Section 35-H
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> in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of

the judgment, the High Court certifies to be a fit one for appeal to the Supreme Court; or

(b). any order passed [before the establishment of the National Tax Tribunal] by the Appellate Tribunal relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment."

7. While adverting to the contentious issues raised and answered and testing the same with reference to the statutory provisions, viz., 35-G and 35-L of the Central Excise Act, 1944, we are in agreement with the submissions advanced by the learned counsel for the respondent.

8. Substantial questions of law raised in the instant appeals cannot be adjudicated, as the instant appeals are not maintainable. Civil Miscellaneous Appeals are dismissed. It is open to the appellant to seek for appropriate remedy, if so advised. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Customs, Excise and Service Tax
   Appellate Tribunal
   Chennai, South Regional Bench
   Chennai 600 006.

2. The Commissioner of Central Excise(Appeals)
   26/1, Mahatma Gandhi Road,
   Chennai 600 034.

+1cc to Mr.R.Venkatavaradan, Advocate, S.R.No.31815
+2cc's to Mr.K.Mohana Murali, Advocate, S.R.Nos.31852 & 31853

Civil Miscellaneous Appeal Nos.
3124 and 3125 of 2008

UG(CO)
CA(28/06/2016)