BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.01.2016
CORAM :
THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

Civil Miscellaneous Appeal(MD) No.1403 of 2015

Commissioner of Central Excise,
Lal Bahadur Shastri Road,
Bibikulam, Madurai 625 002. ... Appellant/Appellant

Vs.

1.The Customs Excise and Service Tax
Appellate Tribunal,
South Zonal Bench,
No.26, Haddows Road,
Chennai 600 006.

2.M/s.Sakthi Sugars Ltd.,
Padamathur Village,
Sivaganga 630 561 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 35 G of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 to set aside the final order No.40699/2015 dated 22.06.2015 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai, the first respondent herein in Appeal No.ST/633/2010 arising out of order in Appeal No.258/2010, dated 20.07.2010 passed by the Commissioner of Central Excise (Appeals), Madurai.

For Appellant : Mr.R.Aravindan

JUDGMENT

(Judgment of the Court was delivered by **V.RAMASUBRAMANIAN,J**)

The Revenue has come up with the above appeal as against the final order passed by the CESTAT.

2.Heard Mr.R.Aravindan, learned counsel for the appellant.

3.The second respondent availed cenvat credit of duty paid on the inputs/capital goods/inputs services used in the manufacture of sugar and molasses. The assessee took a credit to the extent of Rs.15,32,283/- under the Cenvat Credit Rules, 2004. The credit was taken towards service tax paid on Goods Transport Agency service relating to the dispatch of their finished products from the factory gate to their buyer during the period from January 2005 to January 2008.

4.The Department contended that the service tax paid on the transportation charges, cannot be considered as input service under Rule 2(l) of the Rules for the relevant period, in view of the position that prevailed prior to 01.04.2008. Therefore, a show cause notice was issued for reversing the input credit. It finally resulted in an order in original.

5.The assessee filed an appeal and the Commissioner (Appeals) allowed the appeal and set aside the order in original.

6.As against the order of the Commissioner (Appeals), the Revenue filed the second appeal before the CESTAT. The CESTAT dismissed the appeal following the decision of this Court in ***The Commissioner of Central Excise Vs.M/s.Borg Warner Morse Tec Murgappa Pvt Ltd., and another, 2015-TIOL-831-HC-MAD-CX.*** As against the said order, the Department is on appeal.

7.The Department places heavy reliance upon a judgment of the Calcutta High Court in ***CCE, Kolkotta VI Vs.Vesuvious India Ltd., 2014(34) STR 26(Cal).*** But when the jurisdictional High Court namely, Madras High Court has rendered a decision, the CESTAT, South Zonal Bench at Chennai, is bound to follow the said decision. Therefore, there is no substantial question of law arising for consideration in this appeal. We see no reason to take a different view from the view taken in ***M/s.Borg Warner Morse Tec Murgappa Pvt Ltd.,'s*** case. Hence, this appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

The Customs Excise and Service Tax Appellate Tribunal,
South Zonal Bench, No.26, Haddows Road, Chennai 600 006.

sms
CSL/PM-MP/08.02.2016/2p/2c

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