THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

And

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CENTRAL EXCISE APPEAL No.101 of 2015

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

This appeal, under Section 35-G of the Central Excise Act, 1944, is preferred by the Revenue against the order passed by the CESTAT, Bangalore in Final Order No.20584/2015, dated 06.03.2015. The respondents herein are manufacturers of glass bottles and other glass products. They availed CENVAT credit for the service tax paid on goods transport agency services received by them for inward transportation of inputs and outward transportation of their final products from their factory to the customer premises.

Before the CESTAT, Bangalore, the respondent herein contended that, according to the terms of delivery, the price was inclusive, and the terms of delivery were "FOR customer site"; the Superintendent of Central Excise informed them that service tax paid by them on outward transportation was not admissible as CENVAT credit; Rs.13,34,284/- was debited from the CENVAT Credit Register; the original adjudicating authority, thereafter, held that availment of CENVAT credit was wrong; the amounts already paid were appropriated, and penalty equal to the amount of CENVAT credit demand was imposed; in appeal, the Commissioner (Appeals) reduced the penalty but upheld the demand and interest; and aggrieved thereby, they had carried the matter in appeal to the CESTAT.

In the order under appeal, the CESTAT relied on its earlier judgment in ***ABB Limited v. Commissioner of Central Excise & Service Tax, Bangalore***[1] and the judgment of the Karnataka High Court in ***Commissioner of Central Excise & Service Tax, LTU, Bangalure v. ABB Limited***[2]***,*** to hold that it was not the case of the Revenue that the appellant had taken CENVAT credit in respect of transportation from a point beyond the place of removal; and it was the claim of the assessee that they had sold the goods on "FOR destination" basis and, therefore, the credit was admissible, even if definition was to be read as providing for credit “upto the place of removal”.

It is wholly unnecessary for us to examine the applicability of the CENVAT credit Rules in detail, as a similar question arose for consideration before a Division Bench this Court in ***Commissioner of Customs & Central Excise, Hyderabad-III v. Grey Gold Cements Ltd***[3]**.** The question was whether the services availed by the manufacturer (respondents herein), for outward transportation of the final products from the place of removal, should be treated as “input service” in terms of Rule 2 (1) (ii) of the CENVAT Credit Rules, 2004, and thereby enable the manufacturer to take credit of the service tax paid on the value of such services? Or whether the “input service” should be limited only to outward transportation upto the place of removal in terms of the inclusive definition. The Division bench in ***Grey Gold Cements Ltd***[3], relying on the judgment of the Punjab & Haryana High Court in ***Gujarat Ambuja Cements Limited v. Commissioner of Central Excise, Ludhiana***[4] and the observations by the Supreme Court in ***All India Federation of Tax Practitioners v. Union of India***[5]*,* concurred with the opinion of the Tribunal that the submission of the Revenue, that the CENVAT credit could not be allowed for services if the value thereof did not form part of the value subjected to excise duty, ran counter to the fundamental concept of Service Tax as laid down in the judgment of the Supreme Court in ***All India Federation of Tax Practitioners***[5]. The appeal preferred in ***Grey Gold Cement Ltd***[3] was dismissed on the ground that no question of law, let alone a substantial question of law arose for consideration. As a question, similar to the one which arises for consideration in this appeal was negatived by the Division bench of this Court in ***Grey Gold Cement Ltd***[3], this appeal also necessitates dismissal as no question of law, let alone a substantial question of law, arises for consideration in this appeal.

The appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall stand disposed of. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

08th February, 2016.
Tsy

---

[1] 2009(15) STR 23 (Tri-LB)

[2] 2011 (23) STR 97 (Kar)

[3] 2014 (34) STR 809 (AP)

[4] 2009 (14) STR 3 (P&H)

[5] 2007 (7) STR 625 (SC)