NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No. 68 of 2017

Commissioner, Central Excise & Customs, Raipur.

---- Appellant

Versus

M/s SKS Ispat & Power Ltd. 18th Milestone, Bilaspur Road, Siltara Industrial Area, Siltara, Raipur (CG).

---- Respondent

For Appellant	:	Shri Vinay Pandey, Advocate.
For respondent	:	Smt. Smiti Sharma, Advocate.

Hon'ble the Chief Justice &
Hon'ble Shri Justice P. Sam Koshy
Order On Board

21/06/2017

Per, Thottathil B. Radhakrishnan, CJ

1. We have heard learned counsel for the revenue in this appeal under Section 35-G of the Central Excise Act. We have also heard learned counsel who takes notice on behalf of the respondent.
2. This case relates to denial of Cenvat Credit availed in service tax paid on GTA services for transporting final products from the factory of the respondent to three premises; the first being the respondent's depot, the second being the respondent's consignment agent and the third being the respondent's customers. The demand was confirmed by the department authorities only on the ground that the factory is considered as a “place of removal” and any outward transportation beyond the factory is not entitled for credit as per the definition of “input service” under the Cenvat Credit Rules, 2004.
3. Appreciating the relevant facts and factors and the rival contentions, the Tribunal held that the issue is covered in favour of the assessee as per the decision of the Karnataka High Court in 2011(23) STR 97 (Kar.) reversing the decision of the Tribunal in ABB Ltd. Vs. CCE & ST, Banglore, reported in

2009(15) STR-23. We are told by the learned counsel for the revenue that against the said decision of Karnataka High Court, the department moved before the Apex Court by filing Special Leave Petition.

4. The reasoning given by the Tribunal in the impugned order is based primarily on issues of facts relating to the identity of the “place of removal” for the purpose of availing benefit. The Tribunal has considered the materials and has also considered the nature of contract between the assessee and its customers. Under such circumstances, we are of the view that the findings of the Tribunal that the assessee was entitled to credit for the amounts covered, does not warrant interference through this appeal. This is all the more so because no substantial question arises for decision in this appeal to be answered in favour of the revenue on the found facts. Hence, this appeal fails.

5. In the result, the appeal is dismissed.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(P. Sam Koshy)
JUDGE

inder