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HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No.140 of 2017

(Arising out of order dated 20.1.2017 in Final Order No.A/51915/2017-SM[BR] of the learned Customs, Excise, Service Tax Appellate Tribunal)

The Principal Commissioner CCE Raipur, Central Excise Building, Dhamtari Road, Tikarapara, Raipur, Chhattisgarh.

---- Appellant

Versus

M/s Vikas Metalliks & Energy Ltd. Khasra No.142, Village Tusel, Tahsil Jagdalpur, District Bastar, Chhattisgarh.

---- Respondent

For Appellant : Shri Vinay Pandey, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Sharad Kumar Gupta, Judge.

Order on Board

Per Thottathil B. Radhakrishnan, Chief Justice

11/09/2017

1. We have heard the learned counsel for the Appellant/Revenue quite in *extensio* in this appeal under Section 35G of the Central Excise Act, 1944.

2. Adverting to the facts and materials in hand, the Customs, Excise and Service Tax Appellate Tribunal; for short the 'Tribunal', has concluded that the activity of the assessee amounts to service of cargo handling, which is one that falls within the definition of 'capital goods'. The Tribunal accordingly held that the service tax paid under the BAS by considering the total service of the assessee as a composite service, essentially made the assessee eligible to CENVAT Credit claimed on tippers.

3. Learned counsel for the Appellant/Revenue argued that the assessee having treated the transaction as BAS, it was not entitled to proceed to provide a differential classification to claim CENVAT Credit on the basis that there was a component of cargo handling in the BAS. To our query, the learned counsel for the Appellant/Revenue quite rightly pointed out that there was no notification which would apply to the situation in hand to that effect for the relevant time.

4. That being so, the findings rendered by the Tribunal do not generate any substantial question of law for interference by answering it in favour of the Revenue. This appeal therefore fails.

5. In the result, this appeal is dismissed in *limine*.

Sd/- Sd/-

(Thottathil B. Radhakrishnan) (Sharad Kumar Gupta)
CHIEF JUSTICE **JUDGE**

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