NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Tax Case No.38 of 2016

Commissioner, Central Excise,customs & S. Tax, Raipur

---- Petitioner

Versus

M/s Beekay Engineering Corporation Beekay Engineering Corporation, 45/47, Industrial Estate, Nandini Road, Bhilai, District Durg (Chhattisgarh)

------Respondents

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For Petitioner:	Shri Vinay Pandey, Advocate.
For Respondent:	Shri Amrito Das, Advocate.

Hon'ble The Chief Justice

Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per **Thottathil B. Radhakrishnan, Chief Justice**

10/05/2017

1. Respondent is served.

2. Heard learned Counsel for the Appellant/Revenue.

3. This Appeal under Section 35G of the Central Excise Act, 1944 is admitted on the following substantial question of law formulated on 09.11.2016 at the stage of admission:-

> "Whether the CESTAT was justified in allowing the abatement under the Notification No.15/2004-ST dated 10.9.2004, as amended, without passing a speaking order, when the Respondent had neither reversed the credit availed on input services prior to availment of the abatement of 67% under the said Notification (or even before the issuance of order by the Commissioner denying the said exemption) nor could it subsequently account for actual amount of credit availed on input services claimed to be utilized in rendering the services of Industrial Construction in relation to which it had claimed abatement of 67%, as it had not maintained separate

> accounts for the input services utilized for rendering 'Industrial Construction Services ?"

4. Learned Counsel for the Revenue argued that a bare reading of the order of CESTAT would show that though it was dealing with the Appeal at the instance of the assessee, no grounds have been stated therein whereby the reasons are disclosed to end with the reversal of original order dated 03.03.2009.

5. We have examined the impugned order of CESTAT and the original order. We also see that the Revenue is justified in stating that the assessee has raised the issue of reversal of Cenvat Credit for the first time before CESTAT. It appears that a report was called from the jurisdictional Range Officer to ascertain the correctness of the quantification of the reversal by the assessee and as to whether the said establishment has maintained separate records. The Department has pleaded that the reversal was made without maintaining separate accounts for input service credit in respect of 'Commercial or Industrial Construction Service'. It is also further pleaded that the assessee has reversed the Cenvat Credit of input services in the absence of records maintained by it for utilization of the receipts in rendering these services. That apart, it is also further pleaded that the Input Tax Credit availed by the assessee was much after the issuance of the order of the Commissioner after availment of the abatment of 67% from the gross amount charged under Notification.

6. We are of the view that the Revenue is entitled to an opportunity of consideration of its submissions on facts and in law by the CESTAT. Accordingly, the impugned order is only to set aside and an order of remit is made thereby restoring the case No.S.T.A. No.443/2009 for consideration *de novo* by CESTAT.

7. Accordingly, we answer the question of law framed by holding that the Tribunal was not justified in allowing the abatement under Notification No.15/2004-ST dated 10.09.2004 as amended, through the order impugned in this Appeal, which is a non-speaking one on the relevant issue.

8. In the result, the impugned order is set aside and case No.S.T.A. No.443/2009 is remitted to the Tribunal for consideration *de novo* in accordance with law. The parties are directed to mark appearance on 22.06.2017 in the office of the Tribunal so that the Tribunal can list the remitted case for consideration appropriately.

Sd/-	Sd/-
(Thottathil B. Radhakrishnan)	(Sanjay Agrawal)
CHIEF JUSTICE	**JUDGE**

Priya