

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1753 of 2016

Commissioner of Central Excise,
Puducherry Commissionerate,
Puducherry 605 001. Appellant/Respondent

versus

1. Customs, Excise and Service
Tax Appellate Tribunal (CESTAT),
South Zonal Bench, Chennai 600 006.
2. M/s.Bright Brother India Ltd.,
Plot No.1/1 to 4, Thirubuvanai,
Mannadipet Commune,
Pondicherry 605 107. Respondent/Appellant

Prayer: Civil Miscellaneous Appeals are filed under Section 35G of Central Excise Act, 1944, against the Final Order No.40197 of 2016, dated 05.02.2016, on the file of Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

For Appellant : Ms.Hema Muralikrishnan
Standing Counsel

For 1st Respondent : Mr.C.Munusamy

For 2nd respondent : Mr.T.R.Ramesh

J U D G M E N T

(Judgement of this Court was made by S.MANIKUMAR, J.)

Challenge in this Appeal is to the Final Order No.40197 of 2016, dated 05.02.2016, passed by the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), South Zonal Bench, Chennai 600 006.

2. Short facts leading to the appeal are that M/s.Bright Brothers Ltd., the 2nd respondent herein, are the manufacturers of parts of washing machine, falling under Chapter Sub-heading 84509010 of the First Schedule to the Central Excise Tariff Act, 1985. On 24.01.2008, the 2nd respondent availed CENVAT Credit of Service Tax of Rs.25,75,000/- distributed by their Head Office, at Mumbai, as Input Service Distributor, vide Bill No.15/07-08, dated 13.12.2007. The said credit arose on account of service received from M/s.Ambit Corporate Finance Ltd., Mumbai, for assisting sale of 5 units of M/s.Bright Brothers Ltd., at various places. M/s.Ambit Corporate Finance Ltd., is registered at Mumbai, for providing Management Consultancy Services/Business Support Service.

3. Contending inter alia that as the above service received by the head office of the 2nd respondent herein, had no nexus with the manufacturing activity of the 2nd respondent, a Show cause Notice No.91/2010, dated 04.10.2010 has been issued, proposing denial of the above credit, as per rule 2(1)(ii) of the Cenvat Credit Rules, 2004 and recovery under rule 14 of the rules ibid, read with proviso to Section 11A(1) of the Central Excise Act. Both interest and penal provisions have been invoked, in the Show Cause Notice. After due process, the adjudicating authority, vide Order-in-Original No.49/2011, dated 03.10.2011, has confirmed the demand of Rs.25,75,000/-, with interest, and imposed penalty, equal to the amount of credit taken.

4. Being aggrieved by the Order-in-Original, M/s.Bright Brother India Ltd., Pondicherry, 2nd respondent herein, has filed an appeal before the first appellate authority viz., Commissioner (Appeals). The said authority has rejected the appeal on 03.01.2014. Thereafter, the 2nd respondent has filed an appeal before the CESTAT, Chennai, 1st respondent herein. Vide Final Order No.40197 of 2016, dated 05.02.2016, the 1st respondent-Tribunal, observed and held as follows:-

“(i) The 2nd respondent availed services of management consultant in connection with transfer of its units. These services include a bundle of services like finding out potential buyers, making financial evaluation, legal advisory services etc.

(ii) Such a scope of service was considered by learned Commissioner (Appeals) as not having nexus to the business of the 2nd respondent.

(iii) The first appellate authority has not ruled out the relevancy of service in the fitness of the circumstances of the case.

(iv) As it is not ruled out, it cannot be said that the service was irrelevant.

(v) In view of the error of law, committed by learned Commissioner (Appeals), appeal is allowed."

5. As against the abovesaid order, instant Civil Miscellaneous Appeal has been filed, on the following substantial questions of law,

"(i) Whether in terms of 2(1) of CCR, 2004, as it existed during the material period, the CESTAT is correct in holding that the credit availed on the services in connection with selling of Units/Divisions of the 2nd respondent is connected directly or indirectly with the manufacturing and clearance of final product from the place of removal or to the activities relating to the business of manufacture of goods at their Puducherry unit.

(ii) Whether the CESTAT is correct in allowing the said credit without giving any finding as to how the said service qualifies as an input service, but on only the ground that the Commissioner (A) has not ruled out the relevancy of the service?"

6. Record of proceedings shows that on 01.09.2016, this Court, while admitting this appeal, on the above substantial questions of law, ordered notice to the respondents.

7. In support of the above substantial questions of law, the appellant has raised following grounds,

"(1) The head office at Mumbai of the 2nd respondent in their capacity as "Input service Distributor" distributed the service tax charged by M/s.Ambit Corporate Finance Ltd., Mumbai for assisting the sale of 5 units of M/s.Bright Brothers Ltd, to their units at Pondicherry and Faridabad.

(2) The period of dispute in this case is January, 2008 i.e. Prior to 1.4.2011 and the definition of input service as defined in Rule 2(1) of the Cenvat Credit Rules 2004 as it stood at that time is as follows:-

" 'Input service' means any service,-

(i) Used by a provider of taxable service for providing an output service, or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal,

procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation and upto the place of removal.

(3) The above definition can be conveniently divided in five limbs as follows:

(a) Any service used by the manufacturer, whether directly or indirectly, in relation to the manufacture of final products.

(b) Any service used by the manufacturer whether directly or indirectly in or in relation to the clearance of final products from the place of removal

(c) Services used in used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises.

(d) Service used in relation to advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs,

(e) Service used in relation activities relating to business and outward transportation upto the place of removal.

(4) Each of the above 5 limbs, is an independent benefit/concession. If a service falls/covered under anyone of the above, then credit of input services would be admissible even if the service does not fall under the other limbs. All the above limbs of input service have an element of adding value to the principal activity of the assessee which in this case is manufacturing activity.

(5) As per the Job arrangement letter dated 07.07.2006 of M/s.Ambit Corporate Finance Ltd., Mumbai (hereinafter mentioned as Ambit) addressed to the registered office of the 2nd respondent the following points emerge.

(i) Ambit will identify potential buyers to enable the transaction.

(ii) Ambit will approach potential buyers and provide interested parties with additional relevant comprehensive information based on the discussions with the proposed buyers.

(iii) Ambit will hold preliminary meeting and discussions with the proposed buyers.

(iv) Ambit will act as a primary point of contract with the potential buyers and the bankers, lawyers, consultants etc.

(v) Ambit will advise and assist the group in negotiations during discussions with potential buyers.

(vi) Ambit will assist the group in finalizing the Memorandum of Understanding with potential buyers as also in finalizing the Business Transfer Agreement.

From the above the scope of work of M/s.Ambit was extensively relating to identifying potential buyers for the transfer of the Automotive Component business of the 2nd respondent and such service rendered by M/s.Ambit cannot be termed as a professional advice on the business of the 2nd respondent, with reference to their manufacturing operations at their various units."

8. On the above grounds, Ms.Hema Muralikrishnan, learned counsel for the appellant, made submissions.

9. Per contra, inviting the attention of this Court to an Order-in-Appeal No.163/CE/Apl/DLH-IV/2010, passed by the Commissioner of Central Excise (Appeals), Delhi-IV, New CGO Complex, NH-IV, Faridabad-121001, between M/s.Bright Brothers Ltd., Plot No.16-17, Sector-24, Faridabad and Central Excise Department, on the very same subject matter, in the instant Civil Miscellaneous Appeal, Mr.T.R.Ramesh, learned counsel for the appellant submitted that in an identical matter, service tax paid by the 2nd respondent's Head Office, on the fees paid for business consultancy services, has been held to be correctly, available by them. He further submitted that the Department has accepted the abovesaid order and therefore, not open to file the instant appeal, and that therefore, there is no substantial question of law.

10. Though rival contentions have been made, as to the entitlement of CENVAT credit of service, on account of service received from M/s.Ambit Corporate Finance Ltd., Mumbai, for assisting sale of 5 units of M/s.Bright Brothers Ltd., at various places, perusal of the impugned order does not contain detailed reasons, by the Tribunal, excepting to state that the Commissioner of Central Excise (Appeals), has not ruled out the relevancy of service and in the fitness of the circumstances of the case, and once that is not ruled out, it cannot be said that the service was irrelevant.

11. Going through the materials on record, we are of the view that the order of the Tribunal is a non-speaking order, with reference to what is claimed by the 2nd respondent and denied by the Department. At this juncture, we deem it fit to consider few decisions, on this aspect,

(i) The Hon'ble Apex Court in HVPNL v. Mahavir reported in (2004) 10 SCC 86, while dealing with an order passed by the

State Consumer Disputes Redressal Commission, held that the appellate forum is bound to refer to the pleadings of the case, submissions of the counsel, necessary points for consideration, discuss the evidence, and then to dispose of the matter by giving valid reasons.

(ii) In *Tata Engineering & Locomotive Co. Ltd., v. Collector of Central Excise, Pune* reported in 2006 (203) ELT 360 (SC), the Hon'ble Supreme Court, dealing with a case, whereby, a cryptic and non-speaking order, the Tribunal upheld the order passed by the Commissioner, by applying the ratio of the decision of a Larger Bench in *TISCO Ltd., v. CCE, Madras* [2000 (118) ELT 104 (T-LB)], without recording any findings of fact. On the facts and circumstances of the case, the Hon'ble Apex Court, while holding that it is not sufficient in a judgment, to give conclusions alone, but it is necessary to give reasons, in support of the conclusions arrived at, set aside the order of the Tribunal, holding that the findings recorded by the Tribunal therein, were cryptic and non-speaking, and remitted the matter to the Tribunal for taking a fresh decision, by a speaking order, in accordance with law, after affording due opportunity to both the parties.

(iii) In *Commr. of Central Excise, Bangalore-II v. Fitwel Tools & Forgings (P) Ltd.*, reported in 2010 (256) ELT 212 (Kar.), a Hon'ble Division Bench of Karnataka High Court, at Paragraph 5, held as follows:

"After careful perusal of the order impugned, it is manifest on the face of the order that the Tribunal has committed a grave error in passing the order impugned without assigning any valid reasons and without any discussion. By merely following the order passed in similar matters, it has proceeded to pass the impugned order, allowing the appeal filed by the respondent. Hence, we are of the opinion that the impugned order is cryptic in nature and such a non-speaking order cannot be sustained."

12. Needless to state that CESTAT is the final fact finding authority, and obligated to consider the facts and circumstances of the case and arrive at a conclusion, instead of applying general principles. Going through the material on record, we are of the view that general principles in transfer of Units, have been applied by the Tribunal. In the light of the decisions, stated supra, the Tribunal, as a final fact finding authority, is obligated to record the facts, if not in great detail, submissions, discuss the evidence and to pass orders, with reasons.

13. For the reasons, stated supra, we set aside the impugned order. Substantial question of law No.2 is answered in favour of the revenue. The matter is remitted to CESTAT,

Chennai, for consideration, on merits, with reference to the grounds urged and to pass orders orders, on Question of Law No.1, in accordance with law, within a period of two months, from the date of receipt of a copy of this order. It is open to the 2nd respondent to place all the materials before CESTAT, Madras.

14. In the result, the Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Customs, Excise and Service
Tax Appellate Tribunal (CESTAT),
South Zonal Bench, Chennai 600 006.
- 2.The Commissioner of Central Excise,
Puducherry Commissionerate,
Puducherry 605 001.
- 3.The Section Officer,
V.R.Section,
High Court, Madras 104.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.47883
+1cc to Mr.T.R.Ramesh, Advocate, S.R.No.47563

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C.M.A.No.1753 of 2016

SKV(CO)
CA(01/11/2017)

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