IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.3435 of 2011

M/s.Sri Rama Vilas Services Ltd
Represented by its Executive Director
Sri.V.Kasi Rajan ... Appellant/Respondent

Vs.

1.Customs Excise and Service Tax Appellate Tribunal,
Shastri Bhawan,
Haddows Road,
Chennai - 600 006

2.Commissioner of Central Excise & Service Tax,
No.1, Willaims Road, Cantonment
Tiruchirapalli 620 001. ... Respondents/Appellant

Prayer:
Appeal filed under Section 35 G of the Central Excise Act, 1944, against the order dated 26.04.2011 passed in Final Order No.543 of 2011 and Misc.Order 192/2011, by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.P.R.Renganath

For Respondents: Mr.A.P.Srinivas
Senior Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by RAJIV SHAKDHER,J.)

1.This appeal has been filed under 35 G of the Central Excise Act, 1944, whereby, challenge is laid to the final order dated 26.04.2011, passed by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2.This appeal was admitted on 28.11.2011.

2.1.The following question of law was framed by the Court, for consideration:

> "Whether the Tribunal is correct in holding that the appellants are not eligible to Cenvat Credit for Service Tax paid on Gardening service used within their factory while such Gardening service was received and used in compliance with the regulation enforced by Pollution Control authorities?"

3.The record shows that the Customs, Excise and Service Tax Appellate Tribunal (in short, the Tribunal) vide judgment dated 29.04.2011, partly allowed the appeal of the Revenue and dismissed the cross objections filed by the Assessee.

4.As is evident from the question of law, framed above, the issue, which arose for consideration before the Tribunal was, as to whether, the Assessee could avail of, cenvat credit qua, service tax paid on gardening services utilized by it in its factory premises.

5.The Assessee here is a manufacturer of vehicle parts.

5.1.The Tribunal took the view that the Assessee had been unable to establish any connection or nexus of gardening services, availed of by it, with its business activity, which was to manufacture motor vehicle parts.

6.The Tribunal, thus, held that gardening service, was not an eligible service and therefore, service tax paid qua the same, would not enure to the benefit of the Assessee by way of cenvat credit.

7.Evidently, that the issue raised, is directly covered in favour of the Assessee, by a judgment of the Division Bench of this Court passed in the matter of: Commissioner of Central Excise and S.T. Vs. Rane TRW Steering Systems Limited, 2015 (39) STR 13 (Mad).

8.Accordingly, the question of law framed, will have to be answered, in favour of the Assessee.

8.1.It is ordered, accordingly.

9.The appeal is allowed and the impugned order of the Tribunal dated 26.04.2011, is set aside. However, there shall be no order as to costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To
1.The Customs Excise and Service Tax Appellate Tribunal,
Shastri Bhawan,
Haddows Road,
Chennai - 600 006

2.The Commissioner of Central Excise & Service Tax,
No.1, Willaims Road, Cantonment
Tiruchirapalli 620 001.

+1cc to Mr.A.P.Srinivas,Advocate senior Counsel,sr.22326

+1cc to Mr.R.Raghavan,Advocate sr.26972

C.M.A.No.3435 of 2011

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