

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.3480 of 2011

And

M.P.No.1 of 2011

M/s.India Nippon Electricals Limited,
Madukarai Road,
Kariamamickam,
Pondicherry - 605 106

...Appellant/Respondent

Vs.

1.Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road, Chennai - 600 006.

2.The Commissioner of Central Excise,
Goubert Avenue, Beach Road,
Pondicherry - 605 001.

... Respondents

Prayer:

Appeal filed under Section 35 G of the Central Excise Act, 1944, against the order dated 18.06.2010 passed in Final Order No.654 of 2010 by the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Ms.Cynduja Crishnan
for M/s.Mohammed Shaffiq

For Respondents: Ms.R.Hemalatha
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 18.06.2010, passed by the Customs, Excise and Service Tax

Appellate Tribunal, Chennai (in short the "Tribunal").

2. The captioned appeal was admitted by virtue of order dated 21.12.2001, whereby, this Court directed that the following questions of law, be framed for consideration, by the Court:

"1. Whether the Learned Single Member is at liberty to disagree with the views expressed by the Larger Bench of the Tribunal which is apparently in conflict with the judgment of the Supreme Court in the case of Jindal by Intermedia Limited vs. Collector of Customs, Mumbai, reported in 2006 (197) ELT 471 (SC)?

2. Whether the first respondent Tribunal is right in disagreeing with the speaking order recently passed by the Larger Bench in the case of GTC Industries which is against the principles laid down by Supreme Court in its judgment in the case of Kamalakshmi Finance reported in 55 ELT 433?

3. Whether the outdoor caterer providing refreshment to the employees of the appellants is eligible to be an input services used by the manufacturer, directly or indirectly, in or in relation to the manufacture of final products?

4. Whether the manufacturer is entitled to take Cenvat Credit of service tax paid to their outdoor caterer providing food in the factory premises to their employees as input service as decided by the Larger Bench in the case of GTC Industries?

5. Whether the first respondent Tribunal is right in allowing the appeal filed by the revenue on the ground that the outdoor catering services is not eligible to input services as per Cenvat credit rules which is in total disregard of the judgment of the Larger Bench in the case of GTC Industries and that of the Bombay High Court judgment in the case of Coca Cola India Private Limited?"

3. These questions of law arise, in the context of the claim made by the appellant for being given credit of Service Tax paid by them qua outdoor caterer services extended to it, in respect of food supplied to its employees by treating the same as input service used in and/or in connection with its manufacturing activity.

4.To be noted, the appellant herein is a manufacturer of Flywheel Magneto Assembly, regulatory assembly.

5.The Tribunal dealt with the said issue, by way of common order, which was passed in 13 appeals preferred before it.

5.1.To be noted, one such appeal, out of the 13 appeals, filed before the Tribunal, pertained to the appellant herein.

5.2.During the pendency of the appellant's appeal, another Assessee, namely, I.P.Rings Limited approached this Court, by way of an appeal, against the order impugned in the instant appeal.

5.3.The appeal of I.P.Rings Limited was registered as : C.M.A.No.3185 of 2010.

5.4.A Division Bench of this Court has passed a judgement in C.M.A.No.3185 of 2010 and, thus, ruled, in favour of I.P.Rings Limited. The common order dated 18.06.2010, passed by the Tribunal, which is also the order impugned, in the instant appeal, as indicated above, has been set aside.

5.5.The Division Bench, in the case of I.P.Rings Limited, has passed the following operative directions:

"4.The issue in this appeal stands decided in favour of the assessee by two decisions of this Court in The Commissioner of Central excise vs. M/s.Borg Warner Morse Tec Murugappa Pvt Ltd [2015 TIOL 831 HC MAD CX] and The Commissioner of Central Excise v. M/s.Visteon Powertrain Control Systems (P) Ltd., [2015 TIOL 580 HC MAD CX].

5.Accordingly, the questions are answered in favour of the assessee and against the revenue. The appeal stands allowed. It is made clear that the cost of food borne by the worker should not be taken into consideration for the purpose of grant of credit of service tax. No costs. Consequently, M.P.No.1 of 2010 is closed."

6.In the background of the aforesaid state of the law and after noting that the questions of law in I.P.Rings Limited case were identical to the questions of law, raised in the instant appeal, in so far as merits were concerned, the learned counsel for the appellant submitted that the questions of law, which relate to merits of the matter, are questions no.3 and 4.

6.1.According to the learned counsel, questions no.1, 2 and 5, really raise the issue with regard to judicial propriety.

7.Ms.Hemalatha, who appears for the Revenue, similarly, submits that questions no.3 & 4, would relate to the merits of the matter, and are covered against the Department, by a series

of judgment, including the judgment delivered in I.P.Rings Limited case.

7.1. In so far as the remaining questions are concerned, i.e., questions no.1, 2 & 5, Ms. Hemalatha, cannot, but, submit that judicial discipline required the Tribunal to adhere to the decision rendered by a Larger Bench on the same issue.

8. Accordingly, having regard to the judgment in I.P.Rings Limited case, whereby, the common order dated 18.06.2010, passed by the Tribunal has already been set aside, questions No.3 and 4 are answered in favour of the Assessee in the instant appeal.

8.1. In so far as questions no.1, 2 and 5 are concerned, the said questions, on principle, will also have to be answered in favour of the Assessee.

8.2. The principle, in this regard, has been set out by the Supreme Court in Union of India Versus Kamalakshi Finance Corporation Ltd., 1991 (55) E.L.T.433 (S.C.). The relevant observations of the Court are set out in paragraph no.6, which, for the sake of convenience, are extracted hereafter:

"Sri Reddy is perhaps right in saying that the officers were not actuated by any mala fides in passing the impugned orders. They perhaps genuinely felt that the claim of the assessee was not tenable and that, if it was accepted, the Revenue would suffer. But what Sri Reddy overlooks is that we are not concerned here with the correctness or otherwise of their conclusion or any factual mala fides but with the fact that the officers, in reaching their conclusion, bypassed two appellate orders in regard to the same issue which were placed before them, one of the Collector (Appeals) and the other of the Tribunal. The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the

Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in itself an objectionable phrase - and is the subject - matter of an appeal can furnish no ground for not following it unless its operation has been suspected by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessee and chaos in administration of tax laws."

(emphasis is ours)

8.3.A close look at the aforesaid observations would show that the Supreme Court, clearly, held that the orders passed by the Appellate Authorities were binding on the Adjudicating Authority.

8.4.In effect, the Court observed that judicial discipline required that orders of the Appellate Authorities were followed, without reserve by Subordinate Authorities.

8.5.If, that principle is applied to questions No.1, 2 and 5, they would have to be answered in favour of the Assessee, as, in our view, by a logical corollary, a decision of a larger bench would bind a bench of smaller strength of the Tribunal.

9.The appeal is disposed of accordingly. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pri/sm

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex,
No.26, Haddows Road, Chennai - 600 006.

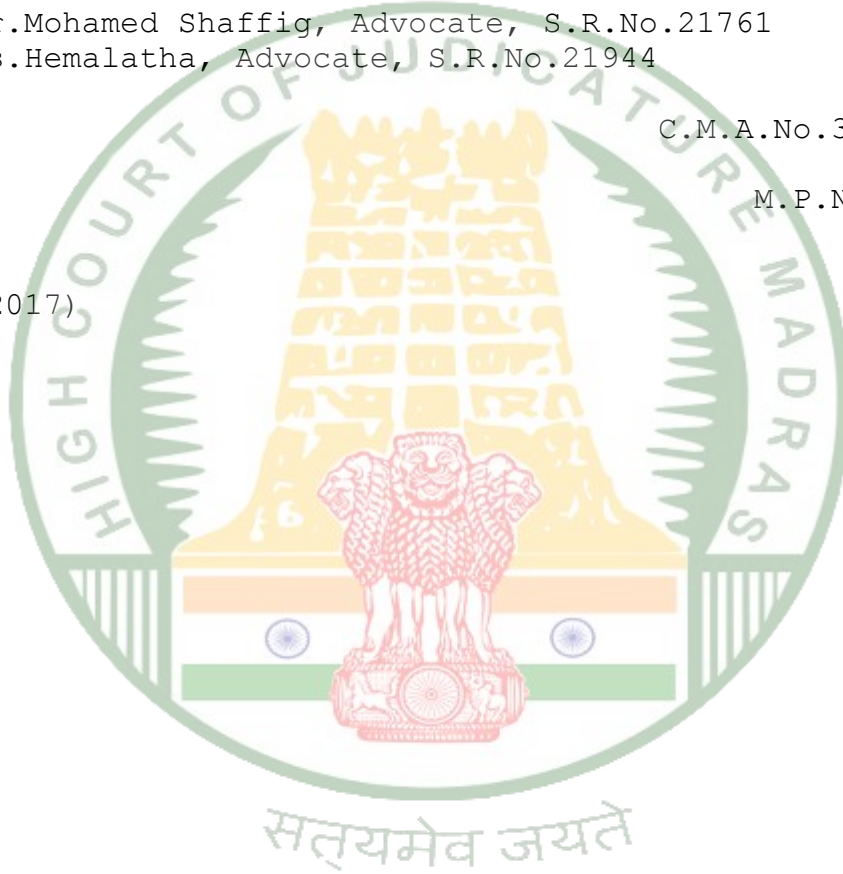
2.The Commissioner of Central Excise,
Goubert Avenue, Beach Road,
Pondicherry - 605 001.

+lcc to Mr.Mohamed Shaffig, Advocate, S.R.No.21761

+lcc to Ms.Hemalatha, Advocate, S.R.No.21944

C.M.A.No.3480 of 2011
And
M.P.No.1 of 2011

GJII (CO)
RS (24/04/2017)



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