IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 12-01-2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH
AND
THE HONOURABLE DR. JUSTICE ANITA SUMANTH

C.M.A.Nos.497 and 498 of 2011

M/s. Tyco Sanmar Ltd.
88/1 B, Vadugapatti Village
Viralimalai, Trichy 620 001 ... Appellant in CMA.497/2011

M/s.Xomox Sanmar Limited
Viralimalai, Pudukottai District
Tiruchirapalli 620 001 ... Appellant in CMA.498/2011

Vs.

The Commissioner of Central Excise
No.1 Williams Road
Cantonment
Trichy 620 001 .. Respondent

Civil Miscellaneous Appeals under new Section 35G of the Central Excise Act, 1944 against the CESTAT's final order Nos.917 and 918 of 2010 dated 20-08-2010.

For appellants :: Ms. Radhika Chandrasekar

For respondent :: Mr.A.P.Srinivas,Senior Standing Counsel

JUDGMENT

(Dr. ANITA SUMANTH,J.)

These appeals come to us at the instance of the assessees challenging an order of the Customs, Excise and Service Tax Appellate Tribunal dated 20-08-2010.

2. The following substantial questions of law are raised for adjudication:

1. Whether in the facts and circumstances of the cases, the Tribunal was correct in denying cenvat credit on service tax paid on garden maintenance on the ground that input services used in or in relation to manufacture alone qualify for credit especially when Rule 2(1) which defines input service is defined in an inclusive manner and covers input services used in or in relation to manufacture as well as input services relating to activities of business?

2. Whether in the facts and circumstances of the cases, the Tribunal was correct in comparing the definition of input and input service to determine the eligibility of credit?

3. Whether in the facts and circumstances of the cases, the Tribunal was correct in ignoring the decision passed by the Tribunal in the Appellant's own case on the very same issue?"

3. Both learned counsel would agree that the issue of availment of credit on service tax paid on garden maintenance is covered in favour of the assessee by a decision of this Court in the case of Commissioner of Central Excise Vs. Rane Trw Steering Systems Ltd., (2015 (39) STR 13 (Mad.), holding as follows:

"It is clear from the decision that where an employer spends money to maintain their factory premises in an eco-friendly manner, the tax paid on such services would form part of the cost of the final products and the same would fall within the ambit of "input services" and therefore, the assessee is entitled to claim the benefit. This Court is in agreement with the ratio laid down in Millipore India Pvt. Ltd. Case,which is equally applicable to the case on hand and following the said decision, this appeal is liable to be dismissed. Accordingly, the substantial question of law is answered in favour of the assessee/respondent and against the appellant/Revenue."

4. The above judgment has been subsequently followed by this Court in the case of Commissioner of Central Excise Vs. M/s. TVS Motor Company Private Ltd.,(C.M.A.No.1967 of 2016).

5. In view of the above discussion, the appeals stand allowed and the substantial questions of law are answered in favour of the assessees and against the respondent/Central Excise Department. No costs.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

To

1. The Commissioner of Central Excise
No.1 Williams Road
Cantonment
Trichy

2. The Commissioner of Central Excise(appeals), Trichy

3. The Chief Commissioner of Central Excise
Coimbatore

4. The Customs, Excise and Service
tax Appellate Tribunal
South Zone Bench, Shastri Bhavan Annex
1st Floor, No.26, Haddows Road
Chennai – 600 006

+1 CC to Mr.K. Vaitheeswaran, Advocate sr 3007
+1 Cc to Mr.A.P. Srinivas Advocate sr 3526

AK(CO)
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