THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

CENTRAL EXCISE APPEAL Nos.63 of 2016 and 82 of 2017

30.11.2017

Between:

The Commissioner of Customs, Central Excise and Service Tax, Hyderabad

..Appellant

And

M/s. Sirigiri Plastic Industries (Unit-II), Hyderabad

..Respondent

Counsel for the appellant: Mrs.Sundari R Pisupati, standing counsel for the Customs, Central Excise and Service Tax

Counsel for the respondent: Mr.S.Ravi, senior counsel, for Mr.R.Sushanth

The Court made the following:

COMMON JUDGMENT: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

These appeals arise out of common order No.21213-21214/2015, dated 29.05.2015, in appeal Nos.E/452/2009-SM and E/453/2009-SM, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Bengaluru (for short 'the CESTAT').

2. We have heard Mrs.Sundari R Pisupati, learned standing counsel for the Customs, Central Excise and Service Tax appearing for the appellant-Revenue and Mr.S.Ravi, learned senior counsel representing Mr.R.Sushanth, learned counsel for the respondent.

3. The respondent was having a Unit at plot No.116, IDA, Kattedan at Hyderabad. It availed the benefit of Cenvat credit of duty on three machines, as capital goods during the year 2000-01. Later, it was found that the machines in respect of which Cenvat credit was claimed were installed in the premises of one M/s.S.K. Plastic Industries. The machines were seized and subsequently released provisionally. The respondent pleaded that the premises of M/s.S.K. Plastic Industries was taken on rent by them and that the machines were installed therein and were used by them in manufacture of their final product. Subsequently, the rented premises was got registered by the respondent with the Central Excise Department as Unit-II on 19.07.2002. The respondent raised an invoice and transferred the capital machines in question to Unit-II on payment of duty and the said Unit has taken the credit. The Original Authority, however, denied the claim of Cenvat credit in respect of Unit-II, besides imposing penalty of the amount equivalent to the credit claim on Unit-I. It is not in dispute that the claim for Cenvat credit in respect

of Unit-I was denied as the machines for which such credit was claimed were found in Unit-II.

4. At the hearing, Mr.S.Ravi, learned senior counsel representing Mr.R.Sushanth, learned counsel for the respondent, has submitted that denial of Cenvat credit and imposition of penalty on Unit-I were questioned before the CESTAT in appeal Nos.E/176-186/2007 and E/332/2007 and the same were allowed on 23.06.2009 and the matter was remitted to the Original Authority for fresh determination and that the Revenue has carried the matter in appeal to the Supreme Court, which is pending. This submission is not disputed by Mrs.Sundari R Pisupati, learned standing counsel for the Customs, Central Excise and Service Tax, appearing for the appellant-Revenue.

5. In the above admitted facts of these cases, the Tribunal has set aside the order denying Cenvat credit to Unit-II and remanded the matter to the Original Authority before whom the claim of Cenvat credit and imposition of penalty on Unit-I is pending. In our opinion, when both the Units are under the same management, one of the two Units may be entitled to Cenvat credit in respect of the machines, which was admittedly availed. When in respect of the claim of one Unit, the matter was already remanded to the Original Authority, it is not only reasonable but also logical that the claim of Cenvat credit in respect of the other Unit also needs to be adjudicated by the Original Authority as only one of the two Units may be entitled to such credit. This course would indeed avoid conflicting decisions also. In this view of the

matter, we do not understand as to how the appellant-Revenue is aggrieved by the remand order.

6. For the aforementioned reasons, we do not find any substantial question of law arising in these Appeals and the same are, accordingly, dismissed.

C.V.NAGARJUNA REDDY, J

T.AMARNATH GOUD, J

30th November, 2017
GHN