THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CENTRAL EXCISE APPEAL No. 81 of 2016

JUDGMENT: ***(Per VRS,J)***

The Revenue has come up with the present appeal under Section 35G of the Central Excise Act, 1944.

2. Heard Ms. Sundari R Pisupati, learned standing counsel for Customs, Central Excise and Service Tax, appearing for the appellant.

3. On 20.01.2017, this Court directed the issue of notice to the respondent on the following question of law:

> *"Whether the respondent is eligible to refund for the export invoices dated 31.03.2009, 30.06.2009, 30.09.2009, 31.12.2009 and 31.03.2010, when the respondent failed to precisely classify their output service is a taxable service and not demonstrated the nexus between their input service and output service exported?"*

3. Notice has been served on the respondent, but there is no representation for the respondent. Therefore, in view of the limited nature of the dispute raised in this appeal, we have taken up the appeal for disposal.

4. As against the order in original, dated 11.11.2011, the respondent/assessee filed an appeal before the Commissioner (Appeals-II). The appellate authority upheld the order in original partly, with regard to the rejection of the refund of claim, in relation to

the invoices dated 31.03.2009, 30.06.2009, 30.09.2009 and 31.12.2009 as barred by limitation. However, with respect to the classification of output services, the appellate authority remitted the matter back to the original authority. The relevant portion of the order of the first appellate authority reads as follows:

> *"In view of the above facts as discussed at para 8 above, I partly uphold the OIO(R) No.06/2011-ST dated 11.11.2011 of lower authority rejecting the refund claim for the invoice No.01/2008-09 dated 31.03.2009, 01/2009-10 dated 30.06.2009, 02/2009 dated 30.09.2009, 3/2009-10 dated 31.12.2009, as barred by limitation of time. However, with regards to classification and other submissions pertaining to both the orders of lower authority where appellants feel that they have documents in their favour, I remand the matter to the lower authority, for limited purpose to enable them to examine the documents furnished and decide their eligibility afresh. The lower authorities shall also give adequate opportunity to the appellants to furnish all records in support of their claims, besides an opportunity of being heard in person be given, before the matter is decided, afresh, strictly in terms of relevant Rules/Notifications/Provisions and procedures."*

5. Aggrieved by the said order, the respondent/assessee filed a further appeal before the CESTAT. The CESTAT confirmed the order of remand passed by the first appellate authority. But while doing so, the Tribunal confined its discussion only to the issue of limitation. Therefore, the Revenue has come up with the present appeal on the apprehension that the issue relating to classification may not be dealt with by the original authority.

6. We have already extracted the relevant portion of the order of the first appellate authority. The order of the Tribunal is very short

and the same, if extracted, would show whether the apprehension of the appellant is justified or not. Hence, the order of the Tribunal is extracted as follows:

> *"The appellant's refund claims in terms of Rule 5 of CENVAT Credit Rules 2004 stand rejected by the lower authorities on various grounds including the ground of limitation. The Commissioner (Appeals) has remanded the matter after holding against the appellant on the point of limitation for verification of documents. The appellant's contention is that the Tribunal in the case of Apotex Research Pvt. Ltd. Vs. CCE vide Interim Order No.79-152/2014 dated 29/-8/2-14 has discussed each and every issue and has opined on all the issues involved in the present appeal including the issue of limitation. As such, we are of the view that the remand before original adjudicating authority would be a blanket remand to be decided in the light of the law laid down by the Tribunal in the above Interim Order. The appeal is disposed of in above manner."*

7. Though at one point the Tribunal has said that all the issues involved in the appeal before them including the issue of limitation could be considered, there is no clarity as to whether the question relating to classification of output services could also be considered or not. Therefore, we are of the considered view that the question of law has to be answered in such a manner that the original authority has to go into these issues.

8. Therefore, the appeal is disposed of, holding that the order of remand would include a question regarding the classification of the output services and the nexus between the input services and the output services.

Consequently, miscellaneous petitions if any pending in the appeal shall stand dismissed. No order as to costs.

V. RAMASUBRAMANIAN, J

J. UMA DEVI, J.

27th February, 2017
cbs

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AND

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