IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A. Nos.1779 and 2107 of 2016 and
C.M.A.No.2027 of 2017

The Commissioner of Central Excise
Puducherry Commissionerate,
Goubert Avenue, Beach Road,
Puducherry-605 001 ... Appellant in C.M.A.No.1779 of 2016

-vs-

1.The Customs Excise and Service
Tax Appellate Tribunal,
South Zone Bench,
Shastri Bhavan Annex 1st Floor,
26, Haddows Road,
Chennai-600 006

2.M/s.IBM India Pvt.Ltd.,
3rd Floor, Subramanya Arcade,
No.2, Bannerghatta Main Road,
Bangalore-560 029 ... Respondents in C.M.A.No.1779 of 2016

M/s.IBM India Pvt.Ltd
3rd Floor, Subramanya Arcade,
No.2, Bannerghatta Main Road,
Bangalore-560 029 ... Appellant in
C.M.A.Nos.2107 and
2027 of 2017

vs.

The Commissioner of Central Excise

Office of the Commissioner of Central Excise,
Goubert Avenue, Beach Road,
Pondicherry-605 001 ... Respondent in
C.M.A.Nos.2107 and
2027 of 2017

Civil Miscellaneous Appeals filed under Section 35G of Central Excise Act, 1944 against the Final Order No.40073/2016, dated 20.01.2016 and the Miscellaneous Order No.40390 of 2016, dated 11.08.2016 in Appeal No.E/421/2006, passed by the Customs Excise and Service Tax Appellate Tribunal, Southern Regional Bench, Chennai, respectively.
C.M.A.No.1779 of 2016
For Appellant : Mr.V.Sundareswaran,
Standing Counsel

For Respondents : Mr.R.Anithkumar for R2

C.M.A.Nos.2107 and 2027 of 2017:

For Appellant : Mr.R.Anithkumar

For Respondents : Mr.V.Sundareswaran,S.P.C.

COMMON JUDGMENT

[Judgement of the Court was Delivered by T.S.Sivagnanam, J.]

These appeals filed both by the assessee as well as the Revenue are challenging the order passed by the CESTAT in Final Order dated 20.01.2016 and the order, dated 11.08.2016, passed in the application for rectification dated 26.2.2016. The substantive appeal is C.M.A.No.2107 of 2016, which challenges the final order passed by the CESTAT, dated 20.01.2016, which reads as follows:

Appellant is absent despite notice. It is explained by learned AR that CENVAT credit was taken by the appellant but that was unutilized and finally merged due to amalgamation with the amalgamated company and the final goods were exempted from 9.7.2004, while the credit was taken prior to that period.

2.A bare perusal of the facts and circumstances of the case demonstrates that the unutilized credit was reversed for which there was no prejudice caused to Revenue. Therefore, calling for interest shall serve no useful purpose of law, when interest of Revenue was not prejudiced.
3.Accordingly, to the above extent, appeal is allowed.

2.On a reading of the above order it is seen that the appellant/assessee was absent and the departmental representative was heard and the Tribunal has passed an order. While doing so, the Tribunal held that calling for payment of interest shall serve no useful purpose of law when interest of Revenue was not prejudiced. To that extent, the assessee was granted relief. However, with regard to CENVAT Credit, the Tribunal accepted the stand taken by the Departmental representative that the CENVAT Credit was taken by the assessee, but that was unutilised and finally merged due to amalgamation with the amalgamated company and the final goods were exempted from 09.07.2004, while the credit was taken prior to that period. Further, the Tribunal observed that a perusal of the facts and circumstances of the case demonstrates that the unutilised credit was reversed for which there was no prejudice caused to the Revenue.

3.The assessee on coming to know about the ex-parte order, filed an application for rectification, contending that they were not intimated about the date of hearing, i.e. 20.01.2016, as they have not served with any notice. Further, with regard to the reversal of the CENVAT Credit, the assessee contended that it was reversed under protest. The Tribunal rejected the application stating that the application for rectification amounted to a Review Application, which is impermissible. This order dated 11.08.2016 is impugned in C.M.A.No.2027 of 2017. The Revenue is on appeal as against the portion of the order passed by the Tribunal, dated 20.01.2016, with regard to the cancellation of the levy of interest and this appeal is C.M.A.No.1779 of 2016.

4.We find that the first date of hearing of the appeal before the Tribunal was fixed on 17.06.2015 and the case was adjourned by the Tribunal to 16.09.2015, vide adjournment notice dated 15.07.2015. On 16.9.2015, the hearing was adjourned by the Tribunal and the parties were informed that they will receive intimation as regards the adjourned date. The assessee's specific case is that neither the assessee nor its authorised representative received any communication from the Tribunal regarding the next hearing date. However, the case stood listed on 20.01.2016, without intimation to the assessee or their authorised representative and on the said date, the final order has been passed.

5.From what has been stated above it is seen that the Tribunal does not assign a specific date on the date of hearing when the case is adjourned and the adjourned date is intimated by an adjournment notice and this procedure was adopted in the assessee's own case and the case stood adjourned to 16.9.2015, and the assessee received the adjournment notice dated 15.7.2015. The Revenue has not pointed out that the adjournment notice, fixing the date of hearing as 20.01.2016, was sent to the assessee. Therefore, we find that the non-appearance of the assessee before the Tribunal on 20.01.2016 is not attributable to the assessee, as they did not have due communication of the date of hearing. Therefore, we find that this is a sufficient ground to recall and set aside the order dated 20.01.2016, so that the appeal can be heard by the Tribunal and decided on merits and in accordance with law. Consequently, the other order, viz., the order dated 11.08.2016, passed in the rectification application dated 22.6.2016, also requires to be set aside.

In fine, the Civil Miscellaneous Appeals are allowed and the Substantial Questions of Law are left open for consideration. The appeal stands restored to the file of the Tribunal to be heard and decided on merits, giving liberty to the assessee and the Revenue to canvass all points. No costs.

[T.S.S., J.] [V.B.S., J.]
08.10.2018
msk

Internet : Yes
Index :Yes/No

To

The Customs Excise and Service
Tax Appellate Tribunal,
South Zone Bench,
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T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

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