IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2018
CORAM:
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MRS.JUSTICE M.GOVINDARAJ

CMA Nos.501 and 502 of 2018
and CMP No.4492 of 2018 in CMA No.501 of 2018

M/s.Sify Technologies Ltd.,
2nd Floor, Tidel Park,
No.4, Canal Bank Road,
Taramani, Chennai - 600 113 ...Appellant in both CMAs

vs.

1. The Commissioner of Central Excise
and Service Tax,
Large Tax Payer Unit,
Chennai.

2. The Customs, Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe,
Chennai - 600 006. ... Respondents in both CMAs

Prayer in CMA No.501 of 2018: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, praying to setaside the Final Order No.42014 of 2017 dated 12.09.2017 passed by Customs, Excise & Service Tax Appellate Tribunal, Chennai.

Prayer in CMA No.502 of 2018: Civil Miscellaneous Appeal filed under Section 35G of the Central Excise Act, 1944, praying to setaside the Misc. Order No.40483 of 2017 dated 14.09.2017 passed by Customs, Excise & Service Tax Appellate Tribunal, Chennai.

For Appellant in both CMAs : Mr.Lakshmi Kumaran

For Respondents in both CMAs : Mr.Rajinish Pathil (for R1)

COMMON JUDGMENT

(Order of the Court was delivered by S.MANIKUMAR, J)

On 26.03.2018, we passed the following order.

"Inviting attention of this Court to CENVAT credit rules, Mr.N.Vijay Narayan, leaned Senior Counsel for the appellant, made submissions to entertain the appeal filed on the following substantial questions of law framed:-

"(1) Whether the 1st respondent is correct in denying the entire common input service credit availed by the Appellant on an incorrect factual premise that the appellant has availed the option under Rule 6(2) of CCR for certain common input services and Rule 6(3) of CCR for certain other common input services?

(2) Whether the 1st respondent is right in denying the benefit provided under Rule 6(3A) of the CCR wherein the option to reverse proportionate credit was extended from 10.09.2004 onwards?

(3) Whether the 1st respondent is right in disallowing the entire common input service credit when there was no machinery provision under the rules which enables the disallowance or lapsing of validity availed credit?

(4) Whether the first respondent is right in confirming the disallowance of the cenvat credit on an allegation which is beyond the proposal in the SCN?

(5) Whether the impugned order is right in confirming the invocation of extended period of limitation when none of the ingredients for invocation of the same has been satisfied in the present case?

(6) Whether the first respondent is correct in imposing penalty under Section 76 and Rule 15(3) and Rule 15(4) of the CCR without giving any finding with regard to the same?"

2. However, drawing the attention of this Court to ground No.K, learned counsel for the appellant has contended that the authority who has issued the show

cause notice, thereafter became a Technical Member of the CESTAT, Madras, and he was also part of the Bench, which passed the Final Order No.42014/2017, dated 12.09.2017. According to her, if the appellant gives up ground No.K, there cannot be any objection for the appeal being heard on merits.

3. Mr.N.Vijaya Narayan, learned Senior Counsel for the appellant submitted that in view of the above grounds, the matter may be remanded back to the CESTAT, Madras for fresh consideration without going to the merits of the case.

4. Mr.Rajinish Pathyil, learned counsel for the revenue, seeks time to get appropriate instructions.

5. Post on 28.03.2018."

2. By producing a true copy of the Show Cause Notice No.48 of 2006 dated 12.10.2006, signed by Mr.B.Ravichandran, the then Commissioner, who had issued the Show Cause Notice and thereafter became the Technical Member of CESTAT and was also part of the Bench, which passed impugned orders in the instant Civil Miscellaneous Appeals viz., Final Order No.42014 of 2017 dated 12.09.2017 and Misc. Order No.40483 of 2017 dated 14.09.2017, Mr.N.Vijay Narayan, learned senior counsel submitted that Ground Nos.'J' and 'K' in CMA Nos.501 and 502 of 2018, respectively, have been substantiated. Show Cause Notice No.48 of 2006 dated 12.10.2006, shall form part of the record.

3. Placing on record the above, it is evident that as adjudicating authority, on prima facie satisfaction, a show cause notice, has been issued. The said authority, has subsequently became a Technical member, on the bench of CESTAT, which has decided the issue against the appellant. Though likelihood of bias has not been pleaded before the Tribunal, but a ground has been raised in the instant appeals.

4. On the above Ground Nos.'J' and 'K' in CMA Nos.501 and 502 of 2018, respectively, and without going into the merits of the case, we are of the view that impugned orders are liable to be set aside and accordingly, set aside. Matter is remanded to CESTAT, Chennai for fresh consideration on merits. Civil Miscellaneous Appeals are disposed of. No Costs. Consequently, the connected Civil Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Central Excise
and Service Tax,
Large Tax Payer Unit,
Chennai.

2. The Customs, Excise and Service Tax
Appellate Tribunal,
Shastri Bhavan Annexe, Chennai - 600 006.

+2 ccs to Mr.Lakshmi kumaran Advocate sr 24183
+2 ccs to Mr.Rajnish Pathiyil Advocates sr 24210,24209

CMA Nos.501 and 502 of 2018
and CMP No.4492 of 2018 in
CMA No.501 of 2018

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