In the High Court of Judicature at Madras

Dated : 31.8.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice V.BHAVANI SUBBAROYAN

Civil Miscellaneous Appeal No.1637 of 2008

E.I.D.Parry (India) Ltd.,
rep.by its Senior Manager
(Taxation), Chennai-1. ...Appellant/Appellant

Vs

1. The Customs, Excise and Service Tax Appellate Tribunal, Shastri Bhavan Annex, No.26, Haddows Road, Chennai-6.

2. The Commissioner of Customs & Central Excise (Appeals-I), NCR Building, Statue Circle, C-Scheme, Jaipur, Rajasthan State-302005.

3. The Deputy Commissioner of Central Excise, Alwar, Rajasthan State. ...Respondents/Respondents

APPEAL under Section 35G of the Central Excise Act, 1994 to set aside final order No.1272/2007 dated 17.10.2007 on the file of the first respondent.

For Appellant : Mr.Akhil Suresh for
Mr.Muthu Venkatraman
For Respondent : Mrs.R.Hemalatha, SSC

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the assessee has been directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.1272/2007 dated 17.10.2007.

2. The above appeal has been admitted on 20.6.2008 on the following substantial questions of law :

> "i. Whether the Tribunal is right in dismissing the appeal filed by the appellant for refund of duty paid on service tax under protest ?
>
> ii. Whether the Tribunal is right in discriminating between the appellant and other similarly placed assessees ? And
>
> iii. Whether the Tribunal is right in ignoring the fact that the demands are time barred and when the same was not covered by the tenet of the retrospective validation ?"

3. We have heard Mr.Akhil Suresh, learned counsel appearing on behalf of the appellant and Mrs.R.Hemalatha, learned Senior Standing Counsel for the Revenue.

4. The questions of law, which have been framed for consideration, were decided by a Division Bench of this Court in the assessee's own case reported in (2015) 39 STR 968, the operative portions of which are as follows :

> "11. From a reading of the above said decision of the Supreme Court and that of this Court, it is clear that the users of the service rendered by the Goods Transport Operators are liable to pay service tax. In the present case, the appellant is using the services of the Goods Transport Operators during different periods between 1997 and 1999. Hence, the appellant is liable to pay service tax. Since the appellant has already paid the service tax, as per the law laid down by the Supreme Court in the case of Gujarat Ambuja Cements Ltd. Vs. Union of India [reported in 2006 (3) STR 608], the question of refund will not arise and the appellant is not entitled for refund. Hence, the Tribunal is justified in confirming the order of the Original Authority declining to grant refund.
>
> 12.Accordingly, following the above said decision of the Supreme Court Gujarat Ambuja Cements Ltd. Vs. Union of India [reported in 2006 (3) STR 608] and the decisions of this Court in the case of Commissioner of Central Excise Vs. Customs, Excise and Service Tax Appellate Tribunal and another [CMA.No.1308 of 2009 batch dated 31.10.2013] and in the case of

Commissioner of Central Excise, Puducherry Vs. Customs, Excise and Service Tax Appellate Tribunal and another [CMA.No.1322 of 2009 dated 04.9.2014], the substantial questions of law admitted by this Court are answered against the assessee and in favour of the Revenue."

5. Following the said decision, the above civil miscellaneous appeal is dismissed and the substantial questions of law framed for consideration are answered in favour of the Revenue. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

To
1.The Customs, Excise and Service Tax Appellate Tribunal,
Shastri Bhavan Annex, No.26, Haddows Road, Chennai-6.

2.The Commissioner of Customs & Central Excise (Appeals-I),
NCR Building, Statue Circle, C-Scheme, Jaipur,
Rajasthan State-302005.

3.The Deputy Commissioner of Central Excise,
Alwar, Rajasthan State.

+1cc to Mr.R.Hemalatha, Advocate SR.No.60305

CMA.No.1637 of 2008

RJ(CO)
RMP(20/09/2018)