IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.36 of 2018 (O&M)
Date of Decision.23.08.2018

Commissioner of Central Excise Delhi-III (now Commissioner of Goods and Services Tax, Gurugram)

...Appellant

Vs

M/s Chang Yun India Ltd. ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sourabh Goel , Advocate
for the appellant.

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RAJESH BINDAL J.

The appellant in the present appeal has challenged the order dated 05.06.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh arising out of Appeal No.E/395/2012, raising the following substantial questions of law:-

"(i) Whether the impugned order dated 05.06.2017 Annexure A-4 passed by the Ld. Customs Excise and Service Tax Appellate Tribunal, Chandigarh Bench is against the law and the same is untenable in the eyes of law?

(ii) Whether the impugned order dated 5.6.2017, Annexure A-4, passed by the Ld. Tribunal is perverse and illegal, insofar as it allows CENVAT Credit for the service tax paid on entire 'repair & maintenance' 'architecture' 'training' services when admittedly those services were also for the sister concern and the adjudicating authority has categorically returned finding on each service?

(iii) Whether the impugned order dated 5.6.2017, Annexure A-4 is a non speaking order and is based on mere surmises and conjectures to conclude that the respondent assessee is entitled to benefit of CENVAT Credit for 'rent service', when admittedly, the part of premises has been sub leased to sister concern and therefore that part of service is not availed and does not have nexus with manufacturing process?

(iv) Whether Hon'ble CESTAT is justified in not considering the provisions of Rule 9 of CENVAT Credit Rules, 2004 which categorically provides for the documents on the basis of which CENVAT Credit may be claimed by the party?

(v) Whether the Ld. CESTAT has committed a grave error in allowing the appeal of the respondent and allowing CENVAT Credit claimed by the respondent on the basis of debit notes which does not find mention in Rule 9 of the CENVAT Credit Rules, 2004?

(vi) Whether in the facts and circumstances of the case, the Ld. CESTAT was justified in overlooking the legal provisions specified that a nexus is to be established between the services rendered and business carried on by the assessee to avail the benefit of Cenvat credit which has also been upheld by the Hon'ble Apex Court in the case of Maruti Suzuki Ltd. 2009(240) ELT 641 (SC)?

(vii) Whether in the facts and circumstances of the case, the Ld. CESTAT has committed a grave error in relying upon the judgment reported in 2010 (260) ELT 369 (Bom) in the case of Ultratech Cement Pvt. Ltd., when the same is under challenge before the Hon'ble Supreme Court and moreover the facts and circumstances are also not same and therefore the said judgment is not applicable in the present case?"

At the very outset, learned counsel for the appellant submitted that the amount involved in the present appeal is ₹ 40,06,525/-. As the amount involved is less than the limit prescribed in the Circular issued by the Central Board of Indirect Taxes & Customs (Judicial Cell) dated 11.07.2018, the present appeal be dismissed as not maintainable.

Ordered accordingly.

However, it is made clear that dismissal of present appeal will not be taken as upholding the order passed by the Tribunal as the legal issue raised therein is left open to be considered in an appropriate case.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

August 23, 2018
Pankaj*

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**