IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CMA.No.1265/2012

The Commissioner of Central Excise
and Service Tax, Coimbatore. ... Appellant/Respondent

Vs

1.Pricol Limited
Perianaickenpalayam
Coimbatore 641020.

2.Customs, Excise & Service Tax Appellate
Tribunal, South Zonal Bench
Chennai 600 006. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under section 35G of the Central Excise Act, 1944, against the order made in Final Order No.859-976/2011 dated 27.07.2011 [Appeal No.E/136/2008] on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai 600 006.

For Appellant : Mr.A.P.Srinivas
Sr.Standing Counsel

For R1 : Mr.S.Jaikumar

JUDGMENT

[Judgment of the Court was delivered by VINEET KOTHARI, J.,]

The Revenue has filed this Appeal aggrieved by the order dated 27.07.2011 passed by the learned Tribunal disposing of a batch of appeals on the issue, whether the transportation charges incurred by the manufacturer for clearance of final product from the place of removal, are included in the definition of ''input service'' for eligibility to availment of CENVAT credit of service tax or not?

2 The learned Tirbunal followed the decisions of the Karnataka High Court in the case of CCE & ST, LTU, Bangalore Vs. ABB Limted reported in 2011 [23] STR 97 [Kar.] and held in favour of the assessee that the transportation charges incurred by the manufacturer for clearance of final product from the place of removal upto 01.04.2008, when the law was amended in this regard, were included in the definition of ''input service''.

3 The learned counsel for the appellant/Revenue has submitted that after the Tribunal decided these appeals, the Hon'ble Supreme Court of India, has dealt with this issue in two of the judgments cited at the Bar, viz., [1]CCE Vs. Vasavadatta Cements Limited reported in 2018 [11] GSTL 3 [SC] decided on 17.01.2018 ; and [2] CCE Vs. Andhra Sugars reported in 2018 [10] GSTL 12 [SC] decided on 05.02.2018. The relevant paras relied on by the learned counsel for the appellant/Revenue are quoted below from these two judgments:-

[1]CCE Vs. Vasava Dutta reported in 2018 [11] GSTL 3 [SC] :-

> ''7 As mentioned above, the expression used in the aforesaid Rule is ''from the place of removal''. It has to be from the place of removal upto a certain point. Therefore, tax paid on the transportation of the final product from the place of removal upto the first point, whether it is depot or the customer, has to be allowed.''

[2]Customs Vs. Andhra Sugars reported in 2018 [10] GSTL 12 [SC]

> ''5 We may refer to Circular No.97/8/2007-S.T., dated August 23, 2007 issued by the Central Board of Excise and Customs [CBEC] [hereinafter referred to as the ''Board''] as per which the definition of ''input service'' was clarified and the Circular also provided the conditions which are to be satisfied to cover the case within ''place of removal''. The three conditions contained in the circular are [i] regarding ownership of the goods till the delivery of the goods at the purchaser's door steps ; [ii]seller bearing the risk of or loss or damage to the goods during transit to the destination and [iii]freight charges to be intergral part of the price of the goods.
>
> ...
>
> 8 As can be seen from the reading of the aforesaid portion of the circular, the issue was examined after keeping in mind judgments of CESTAT in Gujarat Ambuja Cement Ltd [2017 [6]

STR 249 [Tribunal]] and M/s. Ultratech Cement Ltd [2007 [6] STR 364 [Tribunal]]. Those judgments, obviously, dealt with unamended Rule 2[1] of Rules 2004. The three conditions which were mentioned explaining the 'place of removal' are defined in Section 4 of the Act. It is not the case of the Department that the three conditions laid down in the said Circular are not satisfied. If we accept the contention of the Department, it would nullify the effect of the word ''from'' the place of removal appearing in the aforesaid definition. Once it is accepted that place of removal is the factory premises of the assessee, outward transportation 'from the said place' would clearly amount to input service. That place can be warehouse of the manufacturer or it can be customer's place if from the place of removal of goods are directly dispatched to the place of the customer. One such outbound transportation from the place of removal gets covered by the definition of input service.''

4 The learned counsel for the respondent/Assessee would submit that the controversy is now covered by the above cited judgments of the Apex Court and the learned Tribunal was justified in allowing the appeals of the assessee and with respect to the remand of the matter to the learned Tribunal, the appeal of the Revenue deserves to be dismissed in the light of the above cited judgments.

5 Having heard the learned counsel for the parties, we are satisfied that the matter may go back to the learned Tribunal to look into the factual aspects of the matter again with respect to the applicability of the above two judgments of the Apex Court in the case of assessee and therefore, we are disposing of the present appeal of Revenue and remit the matter back to the Tribunal to decide the matter afresh in accordance with law, after hearing both parties on the applicability of the above cited two judgments of the Hon'ble Supreme Court of India. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

AP
To

1.Customs, Excise & Service Tax Appellate
Tribunal, South Zonal Bench
Chennai 600 006.

2.The Commissioner of Central Excise
and Service Tax, Coimbatore.

+1cc to Mr.A.P.Srinivas, SC Sr.62469

CMA.No.1265/2012

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srg 16/09/2019