In the High Court of Judicature at Madras

Dated : 03.1.2019

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Civil Miscellaneous Appeal No.3137 of 2018

The Commissioner of GST &
Central Excise, Puducherry
Commissionerate, Puducherry-1. ...Appellant

Vs

M/s.Power Soap Limited,
Puducherry-110. ...Respondent

APPEAL under Section 35G of the Central Excise Act, 1944 against Final Order No.41931 of 2018 dated 29.6.2018 in Appeal No.E/311/2012/D8 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.T.L.Thirumalaisamy

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal by the Revenue under Section 35G of the Central Excise Act, 1944 (hereinafter called the Act) is directed against Final Order No. 41931/2018 dated 29.6.2018 in Appeal No.E/311/2012 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for short, the Tribunal).

2. The appeal has been filed by the assessee by raising the following substantial questions of law :

> "i. Whether, in the facts and circumstances above, the Tribunal is justified in holding that the respondent is eligible to avail CENVAT credit on the

broadcasting services done by third party advertisement agencies, who are intermediary only? And

ii. Whether, in the facts and circumstances, the Tribunal is justified in dismissing the appeal ignoring Rule 9 of the CENVAT Credit Rules, 2004, which prescribe documents eligible for availing CENVAT credit thereby making the provisions of Rule 9 of the CENVAT Credit Rules, 2004 redundant?”

3. We have heard Mr.T.L.Thirumalaisamy, learned Senior Standing Counsel appearing for the Revenue.

4. The matter pertains to denial of credit on the payment of service tax on broadcasting services. The Tribunal noted the fact that the invoices contained the name of the advertising agency as well as the name of the assessee and the product and that the service tax has been paid for the broadcasting services. It further noted that in terms of the Proviso to Rule 9(2) of the CENVAT Credit Rules, 2004, if there has been any discrepancy, it is open to the Assessing Officer to verify the accounts of the assessee and come to a conclusion as to whether the credit is eligible or not. The Tribunal observed that there is no dispute with regard to the service tax paid or availment of services by the respondent and therefore, found that there is no reason to deny credit. Furthermore, it was held that merely because an advertising agency is an intermediary and is not registered with the Service Tax Department, that is not a ground to reject the availment of credit by the assessee.

5. The Tribunal also referred to four of the earlier decisions in the cases of

(i) Indian Oil Corporation Vs. CCE [reported in 2014-TIOL-1246-CESTAT-MUM.];

(ii) CCE Vs. SAS & Company [reported in (2010) 258 ELT 253];

(iii) Jyothi Laboratories Ltd. Vs. CCE, Puducherry (Final Order No.41527/2015 dated 16.11.2015); and

(iv) M/s.Ultratech Cement Limited Vs. CCE, Trichy [Final Order No.42438/2017 dated 23.10.2017].

6. Considering the factual position, we find that no substantial question of law arises for consideration in this appeal.

7. Accordingly, the above civil miscellaneous appeal is dismissed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

To
1. The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2. The Commissioner of GST & Central Excise, Puducherry Commissionerate, Puducherry-1.

+1cc to Mr.T.L.Thirumalaisamy, Advocate SR.No.672

CMA.No.3137 of 2018

CA(CO)
GMY(18/02/2019)