IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

STA-12-2015 (O&M)

Date of Decision: 14.3.2019

M/s IFB Industries Limited, Karnal

...Appellant

Versus

Commissioner of Central Excise & Service Tax, Panchkula

...Respondent

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL.

PRESENT: Mr. Sandeep Goyal, Advocate for the appellant.

Mr. Anshuman Chopra, Advocate for the respondent.

AJAY KUMAR MITTAL, J.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 (in short "the Act") against the order dated 8.6.2015 (Annexure A-13) passed by the Customs, Excise and Service Tax Appellate Tribunal, Principal Bench, New Delhi (hereinafter referred to as "the Tribunal") in Stay Order No. SO/ST/52029/2015-CU(DB), claiming the following substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case, the Ld. Tribunal is justified in directing the appellant to make a pre-deposit of ₹ 64,82,994/- on the basis of amendment in law, the compliance of which the appellant had already made?

(ii) Whether on the facts and in the circumstances of the case, the Ld. Tribunal was justified in directing the appellant to make a pre-deposit of ₹ 64,82.994/- on the basis of an amendment in the definition of exempted services ignoring the corresponding amendment made in the definition of value under Rule 6(3D) Explanation I of CENVAT Credit Rules, 2004?

2. A few facts necessary for adjudication of the present appeal as narrated therein may be noticed. The appellant is a manufacturer of home appliances, namely, washing machines, microwaves, dryers, dishwashers and ovens and has Pan India presence. In the State of Haryana, the appellant had a branch at Karnal where it had two distinct Divisions, namely, Marketing Division and Service Division having registration certificates dated 23.12.2008 and 27.1.2010 (Annexures P-1 and P-2, respectively). For the period from October, 2010 to March, 2011, the Marketing Division had transferred service tax of ₹ 2,04,447/- (including cess) to its Goa factory through input service distribution mechanism. Similarly for the period from April, 2011 to March, 2012, the appellant had transferred ₹ 1,98,671/- to its Goa factory. For the period October, 2010 to March, 2011, the Service Division of the appellant at Karnal took Cenvat Credit of ₹ 1,00,744/- on inputs and ₹ 1,98,552/- on the input services. Similarly from April, 2011 to March, 2012, the Service Division of the appellant at Karnal took Cenvat Credit of ₹ 2,07,947/- on inputs and ₹ 3,82,114/- on the input services. Vide notification dated 31.3.2011 (Annexure A-3), the amendment of Cenvat Credit Rules was made effective w.e.f. 1.4.2011. According to the appellant, since it is not engaged in providing of any exempted services,

Rule 6 of the Cenvat Credit Rules, 2004 (in short "the Rules") does not apply to the appellant. However, the Adjudicating Authority disagreed with the appellant holding that services provided during warranty period were exempted services as no tax was payable on the same and, therefore, levied tax amounting to ₹ 1,46,01,332/- for the period from 1.2.2009 to 30.9.2010. The appellant filed an appeal before the Tribunal, who vide order dated 8.4.2013 (Annexure A-4) granted stay of pre-deposit. Since, the appellant had opted for second option in terms of Rule 6(3A)(a) of the Rules, the necessary declaration was made giving necessary details dated 20.7.2011 (Annexure A-5). A show cause notice dated 11.10.2012 (Annexure A-6) was issued to the appellant for the period from January, 2009 to September, 2010 that providing of free services within warranty period were exempted service. The value of exempted services was wrongly taken to be the sale price of the goods sold from Marketing Division which was completely a separate division and had in no way interconnected with Service Division. The appellant submitted reply dated 21.11.2012 (Annexure A-7) to the said show cause notice. The appellant also provided necessary information showing compliance of Rule 6(3A) of the Rules vide letter (Annexure A-8). The Adjudicating Authority obtained a verification report dated 11.10.2013 (Annexure A-9). On the basis of the said report, the Adjudicating Authority vide order dated 26.12.2013 (Annexure A-10) confirmed the demand of Cenvat Credit of ₹ 1,09,23,882/- (₹ 44,40,888/- for the period from October, 2010 to March, 2011 and ₹ 64,82,994/- for the period from April, 2011 to March, 2012). The penalty under Section 78 of the Act was also imposed. Feeling aggrieved by the order, Annexure A-10, the appellant filed an appeal before the Tribunal on 14.3.2014 (Annexure A-11) along with application (Annexure A-12) for dispensing with the condition of pre-deposit. The Tribunal vide order dated 8.6.2015 (Annexure A-13) granted full waiver for the period from April, 2011 onwards but directed the appellant to make a pre-deposit of ₹ 64,82,994/- along with proportionate interest. Hence, the present appeal.

3. We have heard the learned counsel for the parties.

4. Learned counsel for the appellant claimed that the Tribunal while passing the impugned order was got carried away by the fact that with effect from 1.4.2011, the definition of exempted services as per Rule 2 (e) of CENVAT Credit Rules, 2004 has been amended and, therefore, the case of the appellant would not fall under the same category as it did for the period prior to April, 2011. It was urged that the Tribunal had fallen into an error as it had failed to appreciate that the appellant had already complied with the amended law w.e.f. 1.4.2011 as it had reversed the input tax credit in terms of Rule 6(3A) for which necessary intimation had also been given to the authorities in terms of Rule 6(3A)(g). It was also argued that it was never the case of the Department that the liability is being fastened on the basis of amendment in law as they had all through contended that the repair and maintenance services of the appellant which are provided free of costs during warranty period are exempted services and, therefore, the appellant was required to reverse the CENVAT in terms of Rule 6(3A) from 2009 onwards. According to the learned counsel, the appellant has a very good case on merits and condition of pre-deposit of ₹ 64,82,994/- as a condition precedent for hearing of the appeal is very harsh and oppressive. A prayer was made for full waiver of the said pre-deposit. However, on the other hand, learned counsel for the revenue supported the order passed by the

Tribunal.

5. The issue involved in the present appeal relates to waiver of pre-deposit which is condition precedent for hearing of the appeal on merits. In the facts and circumstances of the case, we propose not to delve into the prima facie merits of the controversy as that might prejudice the outcome of the appeal before the Tribunal. Keeping in view the debatable issue involved in the appeal coupled with the fact that for the period from 1.2.2009 to 30.9.2010, the condition of pre-deposit of tax amounting to ₹ 1,46,01,332/- for hearing of the appeal has been stayed by the Tribunal, in our opinion, the appeal filed by the appellant deserves to be adjudicated without insisting for pre-deposit of ₹ 64,82,994/- in the present case.

6. Accordingly, it is concluded that in view of the above, the Tribunal had erred in law while not granting full waiver from pre-deposit instead directed the appellant to make a pre-deposit of ₹ 64,82,994/- with proportionate interest. Consequently, the present appeal is allowed and the order dated 8.6.2015 (Annexure A-13) passed by the Tribunal is set aside. The Tribunal shall now decide the appeal on merit, in accordance with law without insisting for any pre-deposit in the present case. Needless to say anything observed hereinbefore, shall not be taken to be an expression of opinion on the merits of the controversy.

(AJAY KUMAR MITTAL)
JUDGE

March 14, 2019
gbs

(MANJARI NEHRU KAUL)
JUDGE

Whether Speaking/Reasoned **Yes/No**

Whether Reportable **Yes/No**