IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.7.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1673 of 2017

Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem 636 001. Appellant/Respondent

vs.

M/s.Sakthi Auto Components Ltd.,
Mukasi, Pallagoundenpalayam,
Perundurai 638 056.
Tamil Nadu. Respondent/Appellant

Civil Miscellaneous Appeal filed under Section 83 of Chapter V of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 against the Final Order No.42102 of 2016 dated 25.10.2016 made in Appeal No.ST/42/007-DB passed by the Customs Excise & Service Tax Appellate Tribunal, Madras.

For Appellant : Mr.V.Sundareswaran, Senior Standing Counsel

For Respondent : Mr.Aryaman Ghulata for Mr.S.Muthu Venkataraman

ORDER

(Made by Dr.Vineet Kothari,J)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2. This Civil Miscellaneous Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Customs Excise & Service Tax Appellate Tribunal, Madras, dated 25.10.2016, by raising the following substantial questions of law:-

"(i) Whether the Tribunal was justified in following the decision of this Hon'ble Court in 2014 (33) STR 148 in the case of CCE Vs Cheran Spinners Limited which is admittedly pending in Apex Court by way of Special Leave Petition in SLP(Civil).No.12298/14 (connected with SLP (C).No.5276/11)?

(ii) Whether the Tribunal was correct in ignoring the specific statutory plea that the service tax paid by the service recipient on Goods Transport Agency under the reverse charge basis cannot be defined or fall under the definition of "output service"?

(iii) Whether the Tribunal was correct in totally ignoring the specific restriction imposed under Rule.3 (4)(e) in availing the CENVAT Credit only on output service.

(iv) Whether the Tribunal went wrong in ignoring that in any event of the matter, in absence of statutory records as defined under Rule 9 read with Rule 4 of the CENVAT Credit Rules, 2004 the CENVAT Credit cannot be availed on the service tax paid on reverse basis towards Goods Transport Agency?

(v) Whether the Tribunal was correct in ignoring the subsequent Amendment brought by way of deletion of "Explanation" to Rule.2(p) defining "output service" vide Not.No.8/2006-CE-N.T dated 19/04/06.

[For ready reference the same is extracted below:

> "Explanation - For removal of doubts it is hereby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service"]

(vi) Whether the Tribunal committed an error in ignoring the Clarificatory Amendment made by Legislature in inserting Explanation to Rule.3(4) vide Not.No.28/2012-CE(N.T) dated 20/06/2012 by prohibiting the use of payment of CENVAT credit as service recipient.

[For ready reference the same is extracted below:

> Explanation: CENVAT credit cannot be used for payment of service tax in respect of service where the person liable to pay tax is service recipient]

(vii) Whether the Tribunal was correct in deleting the entire demand of duty and consequential levies with regards more particularly when the payment of service tax on reverse basis on Goods Transport Agency was paid by CENVAT Account on one hand and availing the very same

CENVAT Credit by way of re-credit for payment of duty on the other hand.

(viii) Whether the learned Tribunal is correct in disregarding the Board's Circular No.345/4/2005-TRU dated 03.10.2005 while deciding the appeal when it has been held by the Hon'ble Apex Court and other High Courts that the interpretation of the Central Board of Excise and Customs will be binding upon the Revenue?"

3. When the matter is taken up for hearing, learned Senior Standing Counsel, Mr.V.Sundareswaran appearing for the Appellant/Revenue prays for leave of the Court to withdraw the present Appeal as the tax effect in the present Appeal is below the monetary limit of Rs.1 Crore stipulated in the Circular dated 22nd August 2019 issued by the Central Board of Indirect Taxes and Customs.

4. Mr.Aryaman Ghulati, learned counsel for the Respondent has no objection for the same.

5. The Civil Miscellaneous Appeal is, accordingly, dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. Customs Excise & Service Tax Appellate Tribunal, Madras.

2. Commissioner of Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem 636 001.

C.M.A.No.1673/2017

GJ(CO)
RV(09/12/2020)