IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.09.2021

CORAM

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Mr.Justice SATHI KUMAR SUKUMARA KURUP

C.M.A. No.1591 of 2009

M/s. India Japan Lighting Pvt Ltd.,
Rep. by its General Manager Finance
and Company Secretary,
T.V. Venkataramanan,
No.1, Puduchattiram,
(Via) Thirumazhisai,
Tiruvallur High Road,
Chennai - 600 107. .. Appellant / Applicant

-vs-

1. The Joint Commissioner of Central Excise,
O/o. The Commissioner of Central Excise,
Chennai-IV Commissionerate,
M.H.U. Complex, 692, Anna Salai,
Nandanam, Chennai - 600 035.

2. The Commissioner of Central Excise (Appeals),
26/1, Mahatma Gandhi Road,
Chennai - 600 034.

3. The Customs, Excise and Service
Tax Appellate Tribunal,
Shastri Bhavan Annex,
26, Haddows Road, Chennai - 600 006. .. Respondents

Appeal under Section 35G of the central Excise Act 1994, praying to set aside the Final Order Nos.868/2007 dated 13.07.2007 in Appeal No.198/2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal.

For Appellant : Mrs. P. Jayalakshmi
for Mr. S. Muthuvenkataraman

For Respondents: Mr. A.P. Srinivas
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

This Appeal filed by the Assessee under Section 35-G of the Central Excise Act, 1994 ('the Act' for brevity) is directed against the order dated 13.07.2007 in Appeal No.198 of 2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

2. The Appeal was admitted on the following substantial questions of law :-

> "A) Whether the Tribunal went wrong in denying the benefit of input service credit paid on outward transportation of goods delivered at the doorsteps of the buyers in the light of the Circular No.97/6/2007-ST, dated 23.08.2007?
>
> B) Whether the Tribunal went wrong in equating the definition of "input" under section 2(k) and input services under section 2(l) especially when the expressions "clearance of final products from the place the removal" is conspicuous by its absence under the definition of 'input'?
>
> C) Whether the Tribunal went wrong in disallowing outward transportation in the light of the definition of input service under Section 2(l) which extends the benefit to input services extending the same to "used by the manufacturer whether directly or indirectly, in or in relation to manufacture of finished products and clearance of final products from the place of removal"
>
> D) Whether the Tribunal went wrong in giving a restricted meaning to the expression 'clearance' and 'from the place of removal', overlooking the natural meaning given in the advanced law lexicon, which would mean "transport".
>
> E) Whether the Tribunal went wrong in construing the expression 'from' as 'up to' and thereby excluding the benefit of input service credit for outward transportation.
>
> F) Whether the Tribunal went wrong in construing the expression 'clearance' as every activity anterior to transportation and in holding transportation as posterior activity of clearance ignoring the expression 'from the place of removal'.
>
> G) Whether the Tribunal went wrong in giving too narrow a construction to the expression 'clearance' so as to exclude removal of goods or transportation of goods from the factory especially when the inclusive part of the definition provides eligibility to credit for any activities relating to business.
>
> H) Whether the Tribunal went wrong in construing the expression 'inward transportation of inputs or capital goods and outward transportation up to the place of removal' as an embargo in providing the benefit of input service under sub clause (ii) of sec. 2(l) overlooking the fact that the claim of input service benefit by the applicants are only

in relation to finished goods removed from the factory and not for inputs or capital goods as stipulated in the inclusive part.

I) Whether the order of the Tribunal is correct in law for having not considered the ratio laid down by the Supreme Court in the case of Black Diamond Beverages and another Vs. CTO reported in 1998 1 SCC 458 which has laid down the position as how to interpret the inclusive part of the definition by proceeding to hold 'neither any rule of interpretation nor any judicial authority has tabooed it ?

J) Whether the Tribunal went wrong in placing reliance on the earlier decision rendered in Gujarat Ambuja Cement Vs. Commissioner 2007 80 RLT 8 and Commissioner of Central Excise, Indore, Vs. N.H.K Springs India Limited 2007-EIOL7/T - Del since these decisions are per incurium having not considered the relevant provisions in its totality?

K) Whether the Tribunal went wrong in overlooking the crucial expression 'clearance', 'from', 'business' which are unique expressions used only the definition of input service u/s 2(l) of the Cenvat Credit Rules 2004 and are conspicuous by their absence in the definition of 'input' defined under section 2(k) of the Cenvat Credit Rules 2004?

L) Whether the Tribunal went wrong in placing reliance on the expression 'time of removal' which appears only in section 4(3) of the Central Excise Act, 1944 in deciding the time of payment of duty which expression is conspicuous by its absence in section 2(l) of the Cenvat Credit Rules 2004 defining input service especially when time of payment is an irrelevant factor in deciding the eligibility of Cenvat credit on any input services defined under section 2(l) of the Rules.

M) Whether the Tribunal went wrong in placing reliance on the decision of the Larger Bench in Commissioner of Central Excise Vs. Modi Rubber Ltd. and others reported in 2000 38 RLT 718(T) which had only decided as to whether something would qualify as input or capital goods and the scheme of input services were not even in vogue even to be tested in the said decision?

N) Whether the Tribunal went wrong in analyzing the transaction only from the input perspective and not from input service especially when the definition of input under rule 2(k) of the Cenvat Credit Rules, 2004 contains exclusive clause seeking to exclude various items such as Light Diesel Oil and High Speed Diesel Oil and motor spirit etc., whereas the definition of input

services under Rules 2(l) does not have any such exclusions ?
O) Whether the Tribunal went wrong in construing the expressions 'directly or indirectly' or 'in or in relation to clearance of final products from the place of removal' by giving a narrow and restricted meaning thereby excluding the eligibility on input service credit on outward transportation?”

3. Heard Mrs. P.Jayalakshmi, Learned counsel for the appellant and Mr. A.P.Srinivas, Learned Senior Standing Counsel for the Respondents.

4. The Learned Counsel appeared for the appellant has circulated a letter dated 06.07.2020, which read as follows :-

“ 06.07.2020

To
The Deputy Registrar,
Madras High Court,
Chennai.

Sir,

Ref: Memo of Mentioning – Urgency – Withdrawal of CMA – M/s. India Japan Lighting.

The Appellant M/s. INDIA JAPAN LIGHTING, seeks the permission of this Hon'ble Court to Mention and withdraw in the Court presided over by a Division Bench consisting of HON'BLE DR JUSTICE VINEET KOTHARI and HON'BLE MR JUSTICE KRISHNAN RAMASAMY, the CMA filed on 30.04.2009 with C.M.A.No.1591/2009 against the order passed by the CESTAT, Chennai in APPEAL – 0198 – 2007.
Appellant: M/s. INDIA JAPAN LIGHTING
Counsel: S. Muthuvenkataraman – Ms.1404/1996
smvr19@gmail.com – 9841729113, 9591071418
No.7 (Old No.4) Skandalaya, Justice Sundaram Road, Mylapore,
Chennai – 600 004.

Urgency: The Appellant has opted for SVLDRS scheme and has paid the dues. The Appellant seeks the permission of this Hon'ble High Court to kindly allow for the withdrawal of the CMA as the same has been settled under the SVLDRS Scheme.

In these circumstances, the Appellant seeks the kind indulgence of this Hon'ble Court to treat the matter as urgent, allow mentioning for

withdrawal at the earliest and oblige.
Thanking you,
Yours Faithfully,
Sd/-
(S. Muthuvenkataraman)
Advocate, MS/1404/1996”

5. In the light of the above submissions, the appellant is permitted to withdraw this Appeal, as they have availed the benefit of the Settlement Scheme. Accordingly, the Appeal stands dismissed as withdrawn and the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

Sp/Maya

To

1. The Joint Commissioner of Central Excise,
O/o. The Commissioner of Central Excise,
Chennai-IV Commissionerate,
M.H.U. Complex, 692, Anna Salai,
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RSI(CO)
SB(07/10/2021)