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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.Nos.2244 to 2246 of 2012

Commissioner of Central Excise and Service Tax,
No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

... Appellant
in all appeals

Vs.

1.M/s. The India Cements Ltd.,
Dalavoi Works, Cement Nagar Post,
Senthurai Taluk - 621 730.

2.Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexure,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents
in C.M.A.No.2244 of 2012

1.M/s.Madras Cements Ltd.,
Alathiyur Works, Cement Nagar Post,
Perambalur District - 621 730.

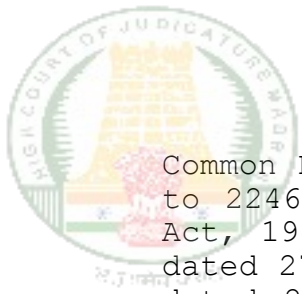
2.Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexure,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents
in C.M.A.No.2245 of 2012

1.M/s. The India Cements Ltd.,
Dalavoi Works, Cement Nagar Post,
Senthurai Taluk - 621 730.

2.Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
Shastri Bhavan Annexure,
No.26, Haddows Road,
Chennai - 600 006.

... Respondents
in C.M.A.No.2246 of 2012



Common Prayer: Civil Miscellaneous Appeals in C.M.A.Nos.2244 to 2246 of 2012 filed under Section 35G(2) of Central Excise Act, 1944, against the Final Order Nos.864, 889 & 893 of 2011 dated 27.07.2011 (out of Common Final Order No.859-976 of 2011 dated 27.07.2011), respectively, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai 6.

For Appellant : Mrs.R.Hemalatha
Senior Standing Counsel
in all appeals

C O M M O N J U D G M E N T
(Judgment was delivered by T.S. SIVAGNANAM, J.)

These appeals filed by the Revenue under Section 35G(2) of Central Excise Act, 1944 ('the Act' for brevity), are directed against the Final Order Nos.864, 889 & 893 of 2011, dated 27.07.2011, on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

2.These appeals have been admitted on 08.10.2012 on the following substantial questions of law :

"1.Whether the Customs, Excise and Service Tax Appellate Tribunal (CESTAT), Madras in the Final Order No.859-976 of 2011 dated 27.07.2011 (Final Order Nos.859, 864, 889 and 893 of 2011 dated 27.07.2011 in these cases) was right in relying upon the decision of the Karnataka High Court in CCE & ST, LTU, Bangalore Vs. ABB Ltd [2011 (23) STR 97 (Kar.)] holding that transportation charges incurred by the manufacturer for clearance of final product from place of removal, up to 01.04.2008 were included in the definition of "input service", especially in respect of the respondent?

2.Whether in view of the varying interpretation of the term 'input service' in various decisions, the CESTAT, Chennai was right interpreting the term in the manner as in the order?"

3.Heard Mrs.R.Hemalatha, learned Senior Standing Counsel, appearing for the appellant/Revenue.

4.We need not labour much to take a decision in these



the Hon'ble Division Bench of this Court in the case of Commissioner of Central Excise and Service Tax, Coimbatore v. Pricol Limited, Coimbatore and another [C.M.A.No.1265 of 2012, dated 22.07.2019]. The Hon'ble Division Bench took note of the fact that the Tribunal had followed the decision in the case of CCE & ST, LTU, Bangalore v. ABB Limited reported in 2011 (23) STR 97 (Kar.) and held in favour of the assessee.

5.It was contended by the Revenue that the Hon'ble Supreme Court has dealt with the issue in two other judgments, namely, CCE v. Vasavadatta Cements Limited reported in 2018 (11) GSTL 3 (SC), dated 17.01.2018, and CCE v. Andhra Sugars reported in (2018) 10 GSTL 12 (SC), decided on 05.02.2018.

6.Noting the submissions and after extracting the relevant paragraphs of the judgments, the Hon'ble Division Bench held that the matter has to go back to the Tribunal to look into the factual aspects of the matter again with respect to the applicability of the two decisions of the Hon'ble Supreme Court and accordingly, the appeal filed by the Revenue was disposed of, remitting the matter back to the Tribunal to decide the matter afresh in accordance with law, after hearing both the parties on the applicability of the two judgments of the Hon'ble Supreme Court. The judgment reads as follows :

"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 Tribunal followed the decisions of the Karnataka High Court in the case of CCE & ST, LTU, Bangalore Vs. ABB Limited 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:-

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[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 integral 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



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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."

7.In the instant case also, the Tribunal had followed the decision of the High Court of Karnataka in ABB Limited (supra) and held in favour of the assessee.

8.In the light of the judgment passed by the Hon'ble Division Bench as noticed above, this matter also needs to be remanded to the Tribunal to take a fresh decision and to decide as to the applicability of the two decisions of the Hon'ble Supreme Court, which according to the assessee, are in their favour.



9. In the light of the above, these Civil Miscellaneous Appeals are disposed of by remanding the matter to the Tribunal for fresh consideration in accordance with law, after hearing the parties on the applicability of the above referred judgments of the Hon'ble Supreme Court. Consequently, the substantial questions of law are left open. No costs.

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

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No.1, Williams Road, Cantonment,
Tiruchirappalli - 620 001.

2. The Customs, Excise and Service Tax
Appellate Tribunal, South Zonal Bench,
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C.M.A.Nos.2244 to 2246 of 2012

SSV(CO)
A.SK(26.10.2021)