In the High Court of Judicature at Madras

Dated : 24.2.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal Nos.2333 & 2334 of 2015

The Commissioner of Service Tax,
Chennai-III, Chennai-40 ... Appellant

Vs

1.M/s.C-Dot Alcatel Lucent Research Centre (P) Ltd., Chennai-41.

2.The Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-6. ...Respondents

APPEALS under Section 35G(2) of the Central Excise Act, 1944 against final order Nos.40184 and 40185/2015 dated 04.3.2015 passed by the second respondent.

For Appellant : Mrs.R.Hemalatha, SSC

For Respondent-1 : No appearance

COMMON JUDGMENT

(Judgment was delivered by T.S.SIVAGNANAM,J)

We have elaborately heard Mrs.R.Hemalatha, learned Senior Standing Counsel appearing for the appellant. Though notice was served on the first respondent, the same returned with the postal endorsement 'left' as early as 08.6.2019. Further, we note that the first respondent did not even intimate the Revenue about the change of office. Hence, we are inclined to take up the appeals and proceed with the matters.

2. These appeals, filed by the Revenue under Section 35G(2) of the Central Excise Act, 1944, are directed against the common

order dated 04.3.2015 made in final order Nos.40184 and 40185/ 2015 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai-6 (for short, the Tribunal).

3. The appeals were admitted on 05.11.2015 on the following substantial questions of law :

> "1. Whether the decision of the CESTAT in allowing refund of CENVAT credit without registration of service provider respondent is correct in law? And
>
> 2. Whether the CESTAT was correct in not considering the safeguards, conditions and limitations contained in the Appendix to Notification No.05/2006-CE(N.T.) dated 14.3.2006?"

4. The common order passed by the Tribunal dated 04.3.2015, which is impugned in these appeals reads thus :

> "In these two cases, Revenue's plea is that when the respondent was not registered, it has no right to get refund of tax paid. Law is well settled that State shall not be enriched at the cost of its citizen as has been held in the case of Salonah Tea Company Ltd. Etc. Vs. Superintendent of Taxes, Nowgong & Ors. Etc., reported in 1988 (33) ELT 249 (SC). Learned Commissioner (Appeals) is therefore correct to order the refund to the assessee. Accordingly, both the Revenue's appeals are dismissed and stay applications disposed."

5. On a reading of the above extracted order, we find that the Tribunal stated the legal position that the State should not be enriched at the costs of its citizen. There can be no quarrel over the said proposition. However, the Tribunal failed to consider as to whether the Commissioner (Appeals) was justified in passing the common order dated 18.12.2013 allowing the appeals filed by the first respondent - assessee. Several grounds have been raised by the Revenue before the Tribunal, which could be seen from the grounds of appeal annexed in the typed set of papers.

6. The Tribunal was required to examine the correctness of the common order passed by the Commissioner (Appeals) with reference to the grounds raised by the Revenue before it. We find that the common impugned order is without any discussion on any of the grounds raised by the Revenue. Hence, we are inclined

to interfere with the common impugned order and remand the matters to the Tribunal for a fresh consideration.

7. For the above reasons, the above civil miscellaneous appeals are allowed and the common impugned order passed by the Tribunal is set aside. The matters are remanded to the Tribunal for a fresh consideration in accordance with law after issuing notice to the first respondent – assessee. It is needless to state that the Tribunal should deal with all the grounds, which have been canvassed by the Revenue before it. Consequently, the substantial questions of law framed are left open.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Registrar,
Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench, Chennai-6.

2.The Commissioner of Service Tax,
Chennai-III, Chennai-40.

CMA.Nos.2333 & 2334
of 2015

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