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 NO.3020 OF 2019

The Commissioner of GST & Central Excise, Chennai North Commissionerate, Chennai-34. ...Appellant

Vs

M/s.Rakindo Kovai Township Ltd., Chennai-18. ...Respondent

Prayer:-
APPEAL under Section 83 of Chapter V of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 against final order No.42918/2018 dated 20.11.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai as against the order passed by the Commissioner, Office of the Commissioner of Central Excise, Chennai-III in V/15/CER/66/2010-STA III, dated 28.02.2011.

For Appellant : Mr.V.Sundareswaran, SSC

For Respondent : Mr.M.P.Senthilkumar for Mr.G.Baskar

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.V.Sundareswaran, learned Senior Standing Counsel appearing for the appellant and Mr.M.P. Senthilkumar, learned counsel appearing on behalf of Mr.G.Baskar, learned counsel on record for the respondent.

2. This appeal filed by the Revenue under Section 83 of Chapter V of the Finance Act, 1994 read with Section 35G of the Central Excise Act, 1944 is directed against final order No. 42918/2018 dated 20.11.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai (for short, the Tribunal).

3. The Revenue has filed this appeal by raising the following substantial questions of law :

> "1. Whether the order of the Tribunal is perverse and contrary to the admitted facts and circumstances of the case?
>
> 2. Whether the Tribunal was right in holding that the respondent is entitled for credit of service tax paid by them prior to registration with the Department ?
>
> 3. Whether the Tribunal is right in holding that the respondent was entitled for CENVAT credit prior to rendering any service nor getting registered with the Service Tax Department when the decisions relied upon are sub-judice in the Apex Court? and
>
> 4. Whether the Tribunal was correct in ignoring the specific provision in the statute that services received from outside India, on which, service tax is to be paid cannot be treated as output service for the purpose of taking CENVAT credit ?"

4. We need not labour much to answer the substantial questions of law raised for consideration as they have been answered in several decisions.

5. We may at this juncture refer to the decision of the Karnataka High Court in the case of Commissioner of Service Tax, Bangalore Vs. Aravind Fashions Ltd. [reported in (2011) 16 Taxmann.com 372] wherein it was held that though the assessee therein was a recipient of service, the service provider being outside India, the assessee therein was to be treated as a service provider and that therefore, the assessee therein was entitled to use CENVAT credit available with it to discharge service tax on the service rendered. The above referred to decision would necessitate us to answer substantial question of law No.4 in favour of the assessee. Accordingly, substantial question of law No.4 is answered in favour of the assessee.

6. With regard to substantial question of law Nos.2 and 3, they were also decided in favour of the assessee. We may refer to the decision of the High Court of Karnataka in the case of mPortal India Wireless Solutions (P) Ltd. Vs. Commissioner of Service Tax [reported in (2011) 16 Taxmann.com 353] wherein it was held that the service tax registration was not mandatory for refund of accumulated CENVAT credit of service tax paid on input service used for export of service. A similar view was taken in the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of GST & Central Excise, Chennai South Commissionerate Vs. BNP Paribas Sundaram Global Securities

Operations Pvt. Ltd. [CMA. No.3493 of 2017 dated 22.12.2017] wherein the substantial questions of law were answered in favour of the assessee. Thus, following the above two decisions, substantial question of law Nos.2 and 3 are answered in favour of the assessee.

7. So far as the first substantial question of law is concerned, it is not a question of law and it is general in nature and hence, the same is rejected.

8. For all the above reasons, the above civil miscellaneous appeal is dismissed by answering substantial question of law Nos.2, 3 and 4 against the Revenue. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

RS

To

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

2. The Commissioner of Central Excise, Chennai-III, Chennai-34.

3. The Commissioner of GST & Central Excise, Chennai North Commissionerate, Chennai.

+1cc to Mr.V.Sundareswaran, Advocate, S.R.No.11148

CMA.No.3020 of 2019

GMI(CO)
CS/19/03/2021