IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM :
The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Civil Miscellaneous Appeal No.3322 of 2014

Commissioner of Service Tax,
No.2054-I, IInd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040. ...Appellant/Appellant

Vs

1. M/s.Verizon Data Services India Pvt. Limited,
9th Floor, Alltius Block,
Olympia Tech Park,
Plot No.1, SIDCO Industrial Estate,
Guindy, Chennai - 600 032.

2. Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
Shasthri Bhawan Annexe, 1st Floor,
No.26, Haddows Road,
Chennai - 600 006. ...Respondents

Civil Miscellaneous Appeal filed under Section 35G(2) of Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 against the impugned order of the Hon'ble Tribunal in Final Order No.40078/2014 dated 07.02.2014 and the Order-in-Original No.93/2010 dated 04.01.2010 passed by the Assistant Commissioner of Service Tax, Chennai III Division, Chennai may be restored.

For Appellant :Mr.T.L.Thirumalaisamy
For Respondent:Mr.Sriram Seshadri for R1
R2- Tribunal

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

This appeal filed by the appellant under Section 35G(2) of the Central Excise Act, 1944 read with Section 83 of Finance Act, 1994 is directed against the order dated 07.02.2014 made in Final Order No.40078/2014 passed by the Customs, Excise & Service Tax Appellate Tribunal, Chennai ('the Tribunal' for brevity).

2. The appeal was admitted on 28.11.2014 on the following substantial questions of law:

> "1. Whether the decision of the Tribunal in allowing the refund of CENVAT credit even without registration of the assessee under Section 69 of the Finance Act, 1994 is correct in law?
>
> 2. Whether Hon'ble CESTAT is correct in not considering the safeguards, conditions and limitations as stipulated in the Appendix to the Notification No.05/2006-CE (N.T) dated 14.03.2006?
>
> 3. Whether the Tribunal Final Order No.40078/2014 dated 07.02.2014 holding that all activities are covered within the first part of the definition of the input service under Rule 2(1) of Cenvat Credit Rules, 2004 is correct in law?
>
> 4. Whether the Tribunal is correct in law in holding that various input services for which refund of cenvat credit is being claimed, is directly needed for providing output service?"

3. We have heard Mr. T.L.Thirumalaisamy, learned counsel appearing for the appellant/Revenue and Mr.Sriram Seshadri, learned counsel appearing for the first respondent.

4. The Revenue seeks to withdraw the case on account of low tax effect in terms of the circular dated 22.8.2019 issued by the Central Board of Indirect Taxes and Customs. By the said Circular, the monetary limit for filing or pursuing any matter before the High Court has been increased to Rs.1 Crore. It is further submitted that the tax effect in this case is less than the threshold limit.

5. In the light of the above, the Civil Miscellaneous Appeal is dismissed on the ground of low tax effect and the substantial questions of law raised are left open. In the event the tax effect is above the threshold limit fixed in the said circular, liberty is granted to the Revenue to file a petition before this Court to restore the matter to be heard and decided on merits. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Assistant Commissioner of Service Tax
Chennai III Division
Chennai

2. Customs, Excise and Service
Tax Appellate Tribunal,
South Zonal Bench,
Shasthri Bhawan Annexe, 1st Floor,
No.26, Haddows Road,
Chennai - 600 006.

3. Commissioner of Service Tax,
No.2054-I, IInd Avenue, 12th Main Road,
Anna Nagar, Chennai - 600 040.

+1 CC to Mr.T.L.Thirumalaisamy, Advocate sr 822.

C.M.A.No.3322 of 2014

RSI(CO)
SP(09/03/2021)