IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

C.M.A.No.2944 of 2017

Commissioner of CGST & Central Excise,
No.1, Foulks Compound,
Anai Medu,
Salem 636 001. .. Appellant/Respondent

Versus

M/s. Sakthi Auto Components Ltd.,
Mukasi, Pallagoundenpalayam,
Perundurai 638 056,
Tamilnadu .. Respondent /Appellant

Civil Miscellaneous Appeal filed under Section 83 of Chapter V of the Finance Act, 1994 r/w Section 35G of the Central Excise Act, 1944 against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order No.40162 of 2017, dated 30.01.2017 made in Appeal No.E/21/2008-DB and to uphold the Order-in-original Sl.No.07/2007 (C.Ex.) (Commissioner) dated 13.11.2007 passed by the Commissioner.

For Appellant :Mr.V. Sundareswaran,
Senior Panel Counsel

For Respondent:M/s.Jayalakshmi for
Mr.S.Muthu Venkatesan

JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

This Civil Miscellaneous Appeal has been filed by the appellant / revenue, questioning the correctness of the order dated 30.01.2017 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai in Final Order

No.40162 of 2017 in Appeal No.E/21/2008-DB.

2.On 05.10.2017, this Civil Miscellaneous Appeal was admitted on the following substantial questions of law:

"(i) Whether the Hon'ble CESTAT, Chennai is correct in allowing the appeal of the assessee regarding the cenvat credit availed on service tax paid for outward transportation.

(ii) Whether the Tribunal was correct in ignoring the law that Amendment by way of "Substitution" of words "clearance of final products upto the place of removal" for the words "clearance of final products from the place of removal" by way of Notification No.10/2008-CE (N.T.), dated 01.03.2008 is applicable for the relevant period of dispute in appeal and consequently the assessee is not entitled for the outward CENVAT credit.

(iii) Whether the Tribunal was right in allowing the appeal filed by the respondent by following the decision of the Karnataka High Court in (2011) 44 VST 1 (CCE Vs. ABB Ltd), when the respondent had not produced any documentary evidence to show that the sale of goods was completed only upon the delivery of the goods at the door steps of the customers.

(iv) Whether the Tribunal committed an error in not appreciating the objects and reasons to find out the objective for introducing the CENVAT Credit Rules, 2004 proposed in the Finance (No.2) Bill, 2004 before interpreting the scheme of the CENVAT Rules, 2004 as held by the Apex Court in (2009) 16 SCC 659 (Tata Power Co Vs. Reliance Energy Limited)

(v) Whether the Tribunal committed an error in ignoring the fact that when the assessee had not included the cost of the "outward freight charges" in the "assessable value" as per the provisions of the Central Excise Act, 1944, the service tax paid on the outward freight charges can be availed as "input service" under the CENVAT Scheme.

(vi) Whether the Tribunal ignored the ratio laid down by the Apex Court in the case of Union of India Vs. Bombay Tyre International reported in (1983) 14 ELT 1896."

3.When the matter was taken up for consideration, the learned senior panel counsel appearing for the appellant, referring to the communication of the Joint Commissioner, O/o. Commissioner of Goods and Service Tax and Central Excise, Salem, in File No.GEXCOM/ LGL/RPTS/MISC/30/2021-Legal-O/o.COMMR-CGST-SALEM dated 11.03.2022 addressed to him, in the light of the Board's instructions in F.No.390/Misc/116/2017-JC dated 22.08.2019, sought permission of this court to withdraw this appeal on the ground of Low Tax Effect. He has also filed a memo dated 16.03.2022 enclosing a copy of the said communication dated 11.03.2022 to that effect.

4.In view of the aforesaid submissions made on the side of the appellant, this appeal, wherein, the tax effect is said to be less than the monetary limit imposed, is dismissed as withdrawn. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

msr

To

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

2.The Commissioner of CGST & Central Excise,
No.1, Foulks Compound,
Anai Medu, Salem 636 001.

+1cc to Mr.V.Sundareswaran, Advocate SR.No.18670
+1cc to Mr.S.Muthuvenkateswaran, Advocate SR.No.18737

C.M.A.No.2944 of 2017

SKM(CO)
CB(19/04/2022)