IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

C.M.A.No.1632 of 2008
and M.P.No.1 of 2012

The Commissioner of Central Excise,
No.1, Foulkes Compound,
Anaimedu, Salem 636 00 ... Appellant

Vs

M/s.The India Cements Ltd.,
Sankari West 639 303
Salem District. ... Respondent

PRAYER: APPEAL filed under Section 35G of the Central Excise Act, 1944 against Order dated 20.03.2007 passed in Final Order No.262 of 2007 on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.K.S.Ramaswamy
Senior Standing Counsel

For Respondent : Mr.Muthu Venkataraman

J U D G M E N T

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

Both Mr.K.S.Ramaswamy, learned Senior Standing Counsel for the Central Excise Department and Mr.S.Muthu Venkataraman, learned counsel for the respondent/assessee would concur on the position that input credit may be availed by the manufacturer on the reverse charge mechanism, and that the issue arising for resolution in this matter is covered by the decision of this Court in *Commissioner of Central Excise, Salem V. Cheran Spinner Ltd.* (2014 (33) S.T.R. 148 (Mad.)). The operative portion of the decision reads as follows:-

'7. As already seen in the preceding paragraph, under Section 68 of the Finance Act, 1994, every person providing taxable service to any person shall pay service tax at the rate specified in Section 68 in such manner and within such period as may be prescribed. Sub Section (2) of Section 68 however states that in respect of any taxable service notified by the Central Government in the Official Gazette, the service tax thereon shall be paid by such person and in such manner as may be prescribed at the rate specified in Section 66 and all the provisions of the Chapter on Service Tax shall apply to such person "as if he is the person liable for paying the service tax in relation to such service".

8. Section 94(1) of the Finance Act gives power to Central Government to make rules for carrying out the provisions of this Chapter. Section 94(2)(ee) and (eee) read as under:-

94(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely -

(ee) the credit of service tax paid on the services consumed for providing a taxable service in case where the services consumed and the service provided fall in the same category of taxable service;

(eee) the credit of service tax paid on the services consumed or duties paid or deemed to have been paid on goods used for providing a taxable service.

9. In terms of Section 37 of the Central Excise Act, 1944

(1 of 1944) and Section 94 of the Finance Act, (32 of 1994) and in supersession of earlier CENVAT Credit Rules, 2002, the Central Government framed Rule under Notification No. 23/2004 - CE (NT), dated 10.9.2004. The Rules thus framed covered the subject matters given under Section 37 of the Central Excise Act and under Section 94 of the Finance Act. The Rule 2(l) defines "input service", which reads as follows:-

2(l) "input service" means any service-

(i) used by a provider of taxable service for providing an output service, or

(ii) used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal,

and includes services used in relation to setting up, modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, activities relating to business, such as accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry and security, inward transportation of inputs or capital goods and outward transportation upto the place of removal;

Rule 2(p), on which heavy reliance placed by the Revenue, defines "output service", which reads as under:-

2(p) "output service" means any taxable service provided by the provider of taxable service, to a customer, client, subscriber, policy holder or any other person, as the case may be, and the expressions 'provider' and 'provided' shall be construed accordingly;

Explanation. - For the removal of doubts it is herby clarified that if a person liable for paying service tax does not provide any taxable service or does not manufacture final products, the service for which he is liable to pay service tax shall be deemed to be the output service.

10. Going by the fiction under Section 68(2) of the

Finance Act, 1994 and CENVAT Credit Rules, 2004, deeming the payer of service tax as the person liable for paying the service tax in relation to such service, it is clear that while in the case of "input service", any service used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, is considered as "input service", in contrast to this, the explanation given under "output service" in Rule 2(l) of CENVAT Credit Rules, thus deems that in the case of a person not proving taxable service or manufacture final products but liable for paying service tax, the service for which he is liable to pay service tax by reason Section 62(2) of the Finance Act, 1994 shall be deemed as "output service". Thus, while Rule 2(l) and 2(p) cover two classes of persons, the recipient of GTA services, by virtue of the Explanation to Rule 2(p) of the CENVAT Credit Rules, as a provider of output service, is entitled to all benefits that a person providing input service would be entitled to in the matter of CENVAT credit adjustment. Thus, a reading of Rules 2(l) and 2(b) would show that they cover two different situations and though their operations are totally different, yet, for the purpose of giving credit to the service tax payable from the CENVAT Credit available, the recipient is also entitled to the same relief as a provider of the service. Thus, we do not find any error in the reasoning of the Tribunal that in the payment of service tax liability by the recipient of taxable service, such assessees are also entitled to make use of CENVAT Credit to discharge their liability under the Service Tax provisions. Consequently, we do not agree with the submission of the Revenue to set aside the order of the Tribunal.

11. Learned Standing Counsel appearing for the Revenue also placed reliance on the circular issued by the Board clarifying the provisions under Rules 2(l) and 2(p) of the Rules. Considering the fact that Rules 2(l) and 2(p) cover two different situations, in either event, the Rules contemplated adjustment of service tax liability as against the CENVAT Credit available to the assessee, the circular relied on would not be of any assistance to the Revenue.'

2. The substantial questions of law admitted are as follows:

> *'1.Whether the Tribunal is right in disregarding the Board Circular No.345/4/2005 TRU dated 3.10.2005 while deciding the appeal when it has been held by Apex Court and other High Courts that the interpretation of the Central Board of Excise and Customs will be binding upon the Revenue?*
>
> *2.Whether the Tribunal is right in holding that the Respondents did not provide any taxable service though they did manufacture an excisable product? But for the above explanation, the GTA service so received by the Respondents would have been covered under the definition of "input service" under Rule 2(l) of Cenvat Credit Rules. By virtue of the explanation, it shall be deemed to be "output service" even after deletion of the explanation given at Rule 2(p) read with definition given at Rule 2(q) and (r) convey similar meaning.'*

3. The questions are thus answered in favour of the assessee/respondent and against the Revenue in line with the decision in *Cheran Spinner Ltd.* (supra).

4. In view of the same, this Civil Miscellaneous Appeal is dismissed. No costs. Connected Miscellaneous Petition is closed.

(A.S.M.,J) (G.A.M.,J)
28.08.2024

Index:Yes
Speaking order
Neutral Citation: Yes
mpl

To

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

DR. ANITA SUMANTH,J.
and
MR. G.ARUL MURUGAN,J.

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