IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR
AND
THE HONOURABLE MR.JUSTICE C. SARAVANAN

C.M.A.No.2959 of 2018

The Commissioner of GST & Central Excise
Chennai South Commissionerate
MHU Complex, No.692, Anna Salai
Nandanam, Chennai – 600 035. .. Appellant

Vs.

M/s. Flextronics Technologies India Pvt. Ltd.
4, 5, 6, 7, 8, RMZ Millennia Business Park
No.143, Dr. MGR Road, Kandanchavadi
Taramani, Chennai
Tamil Nadu – 600 096. ..
Respondent

Prayer: Appeal filed under Section 35G of the Central Excise Act r/w Section 83 of Finance Act, 1944, to set aside the final order No.40774 of 2018 dated 16.03.2018 in Appeal No. ST/346/2012 DB passed by the CESTAT.

For the Appellant : Mr.Su.Srinivasan

For the Respondent : Ms.J.Krithika
and Mr.M.V.Vishal Sundar
for M/s. Lakshmi Kumaran
and Sridharan Attorney

JUDGMENT

(Judgment of the Court was authored by R.SURESH KUMAR, J.)

This appeal had been admitted on 12.12.2018 on the following substantial questions of law:-

> *"i. Whether the respondent is entitled for refund of the CENVAT credit on services rendered during the unregistered period?*
>
> *ii. Whether the Tribunal was correct in allowing refund of CENVAT credit, which is barred by limitation? And*
>
> *iii. Whether the Tribunal was correct in not considering the safeguards, conditions and limitations as stipulated in the Appendix to Notification No.5/2006 CE(NT) dated 14.03.2006?"*

2. In fact, the issues that have been raised in this appeal, i.e., whether availing the CENVAT credit by the respondent assessee in the current circumstances is justifiable or not, has to be gone into by taking note of the judgments which have already been rendered by the Coordinate Division Bench of this Court in the earlier occasions.

3. The Tribunal's order, confirming the order of the Commissioner (Appeals) allowing the case of the assessee, if gone through based on the said facts, the issues have been already

been decided by the Coordinate Division Bench judgments in the case of ***Commissioner of Service Tax-III, Chennai vs. CESTAT, Chennai***[1]***,*** followed by the decision of the Division Bench of this Court in the case of ***Commissioner of Service Tax – III, Chennai vs. Reed Elsevier Pvt. Ltd.***[2]***.***

4. Since at least in two such Division Bench judgments, the issues have been consistently decided in favour of the assessee, we, by respectfully following the same, are inclined to answer the questions of law framed in this instant appeal in favour of the assessee and against the Revenue.

5. Resultantly, the appeal fails, hence, the same stands dismissed. There shall be no order as to costs. Consequently, C.M.P.No.266 of 2022 is closed.

(R.S.K., J.) (C.S.N, J)
06.11.2024

Neutral Citation:Yes/No

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1 *2017 (3) G.S.T.L. 45 (Mad.)*
2 *2018 (8) G.S.T.L. 355 (Mad.)*

R. SURESH KUMAR, J.
AND
C. SARAVANAN, J.

(drm)

C.M.A.No.2959 of 2018

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