(2015) 04 MAD CK 0127

In the Madras High Court

Case No : C.M.A. No. 678 of 2010

The Commissioner of Central Excise — APPELLANT

Vs

Rajshree Sugars and Chemicals Ltd. — RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Citation : (2015) 04 MAD CK 0127

Hon'ble Judges : R. Sudhakar, J;K.B.K. Vasuki, J

Bench : Division Bench

Advocate : K. Mohanamurali, for the Appellant; N. Inbarajan, Advocates for the Respondent

Judgement

R. Sudhakar, J.

1. Aggrieved by the order of the Tribunal in allowing the appeal filed by the assessee, the Revenue/appellant is before this Court by filing the present appeal This Court, vide order dated 11.3.2010 admitted the appeal on the following substantial questions of law:-

"a) Whether the service tax paid towards transportation of raw materials by road as "input service" can be permitted to be adjusted for the very same "input service" for the subsequent period as if it is an "output service" in terms of Rule 3(4)(e) of the Cenvat Credit Rules, 2004?

b) Whether the Hon''ble CESTAT, Chennai is correct in holding "input service" provided by the respondent as "output service"?

c) Whether the Hon''ble CESTAT, Chennai, is right in holding that the respondent has provided taxable "output service" contrary to Rule 2(p) of the Cenvat Credit Rules, 2004, though they manufacture excisable product and provide "input service"?"

2. The case of the respondent/assessee is that for the materials/inputs received goods carriers, they pay the freight charges. For the said inputs received by

road, the respondent is entitled to adjust the service tax paid on inward transportation of raw materials and, therefore, it is entitled to adjust the Cenvat credit earned towards payment of service tax on the use of Goods Transport Service. However, after due process of law, the adjudicating authority as well as the Commissioner (Appeals) held against the assessee confirming the demand along with interest inasmuch as the assessees have not discharged the duty liability as envisaged under the Act and the Rules. Against the said order, the appeal preferred by the assessees was allowed by the Tribunal against which the Revenue is before this Court by filing the present appeal.

3. Though the appeal has been admitted on the above substantial questions of law, at the time of hearing the main appeals, this Court felt that the third substantial question of law alone requires to be considered in the appeal, which was fairly accepted by the learned counsel on either side. Accordingly, this Court is considering only the third substantial question of law.

4. It is brought to the notice of this Court by the learned counsel appearing for the parties that similar question has been considered by this Court in the case of Commissioner of Central Excise, Salem Vs. M/s. Cheran Spinners Ltd. (CMA No. 894 of 2008 dated 5.7.2013) and the issue has been answered against the Revenue and in favour of the assessee. It is submitted that the case on hand is squarely covered by the decision in Cheran Spinnner''s case (supra).

5. In view of the said statement made by the learned counsel on either side that the ratio laid down in Cheran Spinner''s case (supra), is equally applicable to the case on hand, following the said ratio, this appeal is liable to be dismissed. Accordingly, the third substantial question of law is answered in favour of the assessee/respondent and against the Revenue/appellant.

6. Accordingly, the civil miscellaneous appeal fails and the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

