

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal No.532 of 2015
& M.P.No.1 of 2015

Carboline India Pvt. Ltd.
356 & 357 SIDCO Industrial Estate,
Ambattur, Chennai - 600 098.
Tamil Nadu.

... Appellant

versus

The Coimmissioner of Central Excise
Chennai - II

... Respondent

PRAYER: APPEAL filed under Section 35G of the Central Excise Act against the order dated 09.01.2015 made in Misc.Order No.40091 of 2015 in Stay Application No.E/Stay/41455/2014 in Appeal No.E/41055/2014-SM on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai.

For Appellant : Mr.Thomas T.Jacob

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel
for C & CE

J U D G M E N T

(Delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal is filed as against the order dated 09.01.2015 made in Misc. Order No.40091 of 2015 in Stay Application No.E/Stay/41455/2014 in Appeal No.E/41055/2014-SM on the file of the Customs, Excise and Service Tax Appellate Tribunal, South Zone Bench, Chennai raising the following substantial questions of law:

"a. Whether in the facts and circumstances of the case, the Appellate Tribunal was justified in denying cenvat credit on outward transportation charges?

b. Whether when there are contra judgments one in favour of the Department in M/s.Vesuvious India Ltd. reported in 2014 (1) ECS (47) (Hc.Kol.) and other judgments in the ABB Limited Vs. CCE, by Hon'ble Karnataka High Court vide judgment reported in 2011 (23) STR - 97 (Kar.) and that same view having been taken by Hon'ble Gujarat High Court in case of Parth Poly Wooven Pvt. Ltd. reported in 2012 (23) STR - 4 (Guj.) in favour of the assessee can it be said to be justified to have taken the judgment favouring the department?

c. Whether the Supreme Court is seized of the matter in Vesuvious India case and the ABB Limited case on the subject matter of outward transportation charges eligible for Cenvat, whether the Tribunal can only apply law to the facts of the case and pass order under Section 35C r/w Section 35D of the Act?"

2. The brief facts of the case are as follows:

The appellant, who is a manufacturer of Epoxy, Polyurethane, Zinc and things falling under Heading Nos.3208 and 3814 of the Central Excise Tariff Act, (CETA 1985), have availed service tax paid on freight outward charges, insurance services charges and job charges paid by their job workers for the services rendered at the appellant's customer site during the period November, 2009 to August, 2010. The Department was of the view that the appellant had availed the credit wrongly as the services rendered by the appellant do not fall under the category of input services. The Adjudicating Authority vide order-in-original, supported the view of the Department and disallowed the cenvat credit. Aggrieved by the order-in-original, the assessee pursued the matter before the Commissioner (Appeals), who confirmed the demand, thereby rejected the appeal. As against the said order of the Commissioner (Appeals), the appellant preferred further appeal before the Tribunal along with an application for waiver of pre-deposit.

3. The Tribunal, taking note of the averments made, passed an order in the following manner:

"CENVAT credit is claimed against outward freight service availed for delivery of goods after clearance. The said service not being directly or integrally connected with any output service or to manufacture, the appellant is directed to deposit Rs.5,00,000/- (Rupees five lakhs only), within twelve weeks and report compliance on 27.3.2015.

Subject to deposit, realization of the balance demand shall be stayed during the pendency of the appeal."

4. Aggrieved by the order of the Tribunal, the appellant is before us in this appeal.

5. Learned counsel appearing for the appellant submitted that the issue involved in this appeal, whether the appellant is entitled for the benefit of cenvat credit for outward freight charges, is decided by the Karnataka High Court in the case of ABB Limited Vs. CCE, reported in 2011 (23) STR - 97 (Kar.) answering the issue in favour of the appellant. The Tribunal, without taking note of such decision, ordered pre-deposit. Hence, the order of the Tribunal may be set aside.

6. Learned Standing Counsel appearing for the Department reiterated the submissions made before the Authorities below and supported the order of the Tribunal.

7. Heard learned counsel appearing for the appellant and the learned Standing Counsel appearing for the respondent and perused the materials placed on record.

8. The primary issue in this appeal is whether the appellant is entitled for the benefit of cenvat credit on the service tax paid by the appellant. In the decision reported in 2011 (23) STR - 97 (Kar.) ABB Limited Vs. CCE, the Karnataka High Court decided the issue in favour of the appellant. Whether such decision is applicable to the facts of the case has to be decided by the Tribunal while hearing the main appeal. Since, prima facie, there appears to be a case in favour of the appellant, we are inclined to modify the order of the Tribunal.

9. For the foregoing reasons, we pass the following order:

- (i) On the questions of law raised, we are of the view that the Tribunal was not justified in ordering the pre-deposit in the manner stated in its order dated 09.01.2015; and
- (ii) Consequently, the order of the Tribunal dated 09.01.2015 is modified to the effect that the appellant shall make a pre-deposit of Rs.1,00,000/- (Rupees One lakh only) on or before 02.06.2015 and subject to such compliance, as stated in the order of the Tribunal dated 09.01.2015, the pre-deposit of balance amount demanded shall remain

waived and its collection shall stand stayed during the pendency of the appeal before the Tribunal.

In the result, this appeal is ordered in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Customs, Excise and Service Tax Appellate Tribunal,
South Zone Bench, Shastri Bhavan Annex,
1st Floor, No.26, Haddows Road,
Chennai - 600 006.
2. The Coimmissioner of Central Excise
Chennai -II

+3cc's to Mr.Thomas T.Jacob, Advocate, S.R.No.24178
+1cc to Mr.A.P.Srinivas, Senior Standing Counsel for C & CE,
S.R.No.24424

C.M.A.No.532 of 2015
& M.P.No.1 of 2015

KV(CO)
CA(14/05/2015)

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