

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JUNE, 2022

PRESENT

THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CENTRAL EXCISE APPEAL NO.16/2021

BETWEEN:

THE COMMISSIONER OF CENTRAL TAX,
BANGALORE NORTH COMMISSIONERATE,
NO.59, GROUND FLOOR, HMT BHAVAN,
GANGA NAGAR, BANGALORE – 560 032.

EARLIER KNOWN AS:

LARGE TAXPAYER UNIT,
J.S.S.TOWERS, BANASHANKARI III STAGE,
100 FT. RING ROAD,
BANGALORE – 560085.

...APPELLANT

(BY SRI JEEVAN J NERALAGI, AGA)

AND:

M/S ABB LIMITED,
MANEJA WORKS,
MANEJA, VADODARA,
GUJARAT – 390 013.

...RESPONDENT

(BY SRI RAVI RAGHAVAN, ADVOCATE)

THIS C.E.A IS FILED UNDER SECTION 35G OF THE
CENTRAL EXCISE ACT 1944, ARISING OUT OF ORDER DATED:
05/10/2018 PASSED IN FINAL ORDER BEARING
NO.21532/2018, PRAYING THIS HON'BLE COURT TO:

A. ALLOW THE APPEAL OF THE APPELLANT AND DECIDE THE QUESTIONS OF LAW AS FRAMED ABOVE.

B. SET ASIDE IMPUGNED FINAL ORDER BEARING NO.21532/2018 DATED: 05/10/2018 PASSED BY THE CESTAT SOUTH ZONAL BENCH, BENGALURU.

THIS APPEAL COMING ON FOR HEARING THIS DAY, **P.S. DINESH KUMAR J**, DELIVERED THE FOLLOWING:-

JUDGMENT

This appeal has been admitted to consider following questions of law:

"1. Whether in the facts and circumstances of the case, CESTAT is right in dropping the demand for extended period (from January 2005 to September 2008) mainly on the ground that the details of trading was available in the Balance Sheet of the respondent during the relevant period and that there was much confusion during the relevant period as to whether credit could be availed in respect of trading activities and the issue was in litigation leading to perversity?

2. Whether, the CESTAT is right in dropping the demand for extended period by ignoring the factual findings arrived at in Order-In-Original

by the Commissioner thereby leading to perversity in the impugned Final Order?

3. Whether, mere availability of details of trading in Balance Sheet is sufficient to drop the demand for extended period on the ground that there was no suppression?

4. Whether, the CESTAT is right in attributing the prior knowledge of trading activity of the respondent ignoring the fact that the respondent produced the Balance Sheet only during the investigation and not prior to that?

5. Whether, the CESTAT is right in setting aside the demand for extended period along with penalties imposed by relying upon the decisions of Tribunal in the case of respondent's own case and in the case of SHV LPG India Pvt. Ltd by ignoring the factual aspects involved in the present case thereby leading to perversity?"

2. Heard Sri Jeevan J Neeralgi, learned AGA for the appellant/Revenue and Sri Ravi Raghavan, learned advocate for the respondent/assessee.

3. Brief facts of the case are, respondent is engaged in the business of manufacture and clearance of turbo chargers, electric motor, transformer etc. falling under Chapter 85 of Central Excise Tariff Act, 1985 ('CETA, 1985' for short). They are also engaged in providing taxable output services such as management, maintenance, repairs etc. For the purpose of payment of service tax on the services rendered and on the import of services, they have obtained service tax registration. Based on the intelligence report, a show cause notice was issued on 23.04.2010 stating that apart from manufacturing, respondent was also engaged in trading of electrical goods under the trade name 'ABB' and it had wrongly utilised the Cenvat credit in relation to the trading activity. By the notice, respondent was called upon to show cause as to why Rs.5,68,00,000/- should not be treated as wrongful availment of Cenvat credit and recovered from it under Rule 14 of the Cenvat Credit Rules, 2004 read with Proviso to Section 73 of the Finance Act, 1994 and proviso to Section 11A of the Central Excise

Act, 1944. A reply was filed by the respondent leading to Order in Original dated 30.04.2011 by the Chief Commissioner of Customs holding that the Cenvat credit was inadmissible for trading activities and it was disallowed. Further direction was issued for appropriation of the said sum in the Cenvat account on 31.08.2010 and it was paid under protest.

4. On appeal, the Customs, Excise & Service Tax Appellate Tribunal ('CESTAT' for short) held that there was no suppression of facts on the part of the assessee with an intent to evade payment of tax and it confirmed the demand only for normal period i.e., disallowed appropriation of the payment made under protest on 31.08.2010 and interest at applicable rate and penalty of equal sum holding that there was no evasion of payment of tax and set-aside the demand for the extended period of limitation and confirmed the demand only for the normal period. The penalty relating to normal period was also set-aside during the relevant period on the ground that there

was much confusion with regard to the availment of credit for trading activities.

5. Feeling aggrieved, the revenue has filed this appeal.

6. Sri Jeevan J Neeralgi, learned standing counsel submitted that:

- Assessee did not declare its trading activities in the returns;
- Based on the intelligence report, the department learnt about the trading activities of the assessee.
- Findings recorded by the CESTAT in paragraph 6 of its order that the department was well aware of the trading activity of the respondent is factually incorrect. Though the said finding is a matter of fact, since it is perverse on the face of it, it amounts to question of law.

With these submissions, he prayed for allowing this appeal.

7. Sri.Ravi Raghavan, learned advocate for the respondent submitted that the show cause notice issued

was on the basis of the balance sheet wherein all activities of the assessee were truly declared. Therefore, there was no suppression of material facts. Further, the trading activity was included with effect from 01.03.2011 vide notification No.3/2011-CE(NT) issued by Government of India. He submitted that Division Bench of Madras High Court in an identical situation in the case of *ASSTT. COMMR. OF GST & C. EX., CHENNAI vs SHRIRAM VALUE SERVICES PVT. LTD.*¹ has held that when an assessee has acted in good faith, invoking extended period of limitation is not tenable.

8. We have carefully considered the rival contentions and perused the records.

9. Undisputed facts of the case are, as recorded in paragraph 6 of the show cause notice, it was issued based on the balance sheet for the year ending 2008. Thus, the contentions of the Revenue that respondents trading

¹ (2019(368)E.L.T. 928(Mad.)

activity was not known to the department and that it was learnt based on intelligence report are not tenable.

10. In *Shriram Value Services Pvt. Ltd.*, the Madras High Court has held as follows:

"From the above, it is clear that the position was clarified by the Government by insertion of Explanation only with effect from 1-4-2011 that the trading activity will be Exempted Services. The Explanation is clarificatory in nature and can be held to be applicable even for the past period. Thus, at the relevant period of time. Viz., from April 2009 to March 2011, the Assessee was, obviously, under bona fide belief in view of the conflicting decisions of the Tribunals during that period and taking the trading activity as Exempted Services, availed the CENVAT Credit which is sought to be reversed and recovered by the Department invoking the extended period of limitation. Such a bona fide belief cannot be held to be done with ulterior purpose for evading the Duty and therefore, the extended period of limitation would not be available to the Revenue Authority in view of the aforesaid decision rendered by the Hon'ble Supreme Court".

11. In view of the above, the substantial questions raised by the Revenue are answered in favour of the assessee. This appeal fails and is accordingly dismissed. No costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

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