CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Service Tax Appeal No.70495 of 2020

(Arising out of Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/126/2020-21 dated 28.08.2020 passed by Commissioner (Appeals) CGST & Central Excise, Meerut)

Commissioner of CGST, Ghaziabad .....**Appellant**
(C.G.O. Complex-II, Kamla Nehru Nagar, Ghaziabad)

VERSUS

M/s Tirupati Structurals Ltd., ...**Respondent**
(A-6 & 6/5, Site-IV, Sahibabad Industrial Area, Ghaziabad)

APPEARANCE:

Shri Manish Raj, Authorized Representative for the Revenue
Shri Rajesh Chibber, Advocate for the Respondent

CORAM: **HON'BLE MR. P. K. CHOUDHARY, MEMBER (JUDICIAL)**
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70515/2024

DATE OF HEARING : 15 April, 2024
DATE OF DECISION : 15 April, 2024

P.K. CHOUDHARY:

The present appeal has been filed by the Revenue assailing the Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/126/2020-21 dated 28.08.2020 passed by Commissioner (Appeals) CGST & Central Excise, Meerut.

2. The facts of the case in brief are that the Respondent is engaged in the manufacture and clearance of HDPE Duct Pipes; LLDPE/HDPE Plain Lateral Pipes & Tubes; PVC Pipes with or without Socket; PVC Foam Board/Sheet falling under Chapter Sub-Heading No.39172190, 39172110, 39172390 and 39172190 respectively of First Schedule to the Central Excise Tariff Act, 1985. Audit of the records of the party was conducted by the Officers of CGST Commissionerate, Meerut. During the audit, it was observed that the party imported various consignments of raw material during the period from 23.04.2017 to 30.06.2017, but, they did not discharge service tax liability on Ocean freight

under Reverse Charge Mechanism[1]. Vide the Order-in-Original dated 08.05.2020 service tax demand of Rs.4,00,658/- was confirmed and penalty of equal amount was imposed under Section 78 of the Finance Act, 1994. Being aggrieved the Party filed appeal before the First Appellate Authority and the learned Commissioner (Appeals) vide impugned Order-in-Appeal allowed the appeal of the Assessee by setting aside the Order-in-Original. Hence, the present appeal by the Revenue, before the Tribunal.

3. We have heard Shri Manish Raj learned Departmental Authorized Representative appearing for the Appellant Revenue and Shri Rajesh Chibber, learned Advocate appearing for the Respondent Assessee.

4. In the appeal filed by the Revenue, in the grounds of appeal it has been stated as under:-

> *"1. That, the present appeal is being against the subject Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/126/19-20 dated 28.08.2020 passed by the Commissioner (Appeals). In the subject Order-in-Appeal, the Commissioner (Appeals) has set aside the said Order-in-Original No.01/AC/D-VI/CGST/GZB/ dated 08.05.2020 passed by the Assistant Commissioner, Central GST, Division-VI, Ghaziabad and allowed the appeal of the said party by holding that the issue involved in the subject case stands decided by the Hon'ble High Court of Gujarat, vide its judgement dated 06.09.2019, in respect of Special Civil Application No.20785 of 2018, 3123 of 2018, 20791 of 2018 and 20796 of 2018 filed by M/s SAL Steel Limited and Others vs. Union of India. The Commissioner (Appeals) observed that the Hon'ble High Court in its said judgement dated 06.09.2019 [2020-TIOL-163-HC-AHM-ST], has, inter alia, held that:-*
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> > *58. In view of the aforesaid discussion, the writ application succeeds and is hereby allowed. The Notification Nos.15/2017-ST dated 16/2017-ST making Rule 2(1)(d)(EEC) and Rule6(7CA) of the*

[1] RCM

> *Service Tax Rules and inserting Explanation-V to reverse charge Notification No.30/2012-ST is struck down as ultra vires Sections 64, 66B, 67 and 94 of the Finance Act, 1994; and consequently the proceedings initiated against the writ applicants by way of show cause notice and enquiries for collecting service tax from them as importers on sea transportation service in CIF contracts are hereby quashed and set aside with all consequential reliefs and benefits.*
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> *59. In view of the aforesaid, the connected three applications also succeed and are hereby allowed.*

2. That, it is most respectfully submitted that in light of the circumstances as they emerged in light of the review of earlier Order-in-Appeal No.GZB/EXCUS/000/APPL-MRT/395/19-20 dated 09.03.2020, a letter bearing C. No.V(15)Rev/OIA/SCPL/724/2020/1140 dated 01.06.2020 was written to the Additional Commissioner (Legal), CGST Kutch (Gandhidham) Commissionerate, Gandhidham i.e. the jurisdictional Commissionerate of M/s SAL Steel Limited, to comprehend the review status of the subject pronouncement of the Hon'ble High Court, and in response, vide email dated 03.06.2020 the Legal Section of CGST-Gandhidham (Gujarat) send a copy of the "Proposal (Grounds of Appeal) for filing Civil Appeal/SLP before the Hon'ble Supreme Court against the Hon'ble High Court judgement dated 06.09.2019in the matter of M/s SAL Steel Limited, Kutch" which had been submitted by the Commissioner, CGST, Kutch-Gandhidham Commissionerate to the Board vide their office's letter bearing F. No.Legal/SCA-10/2019-20 dated 06.05.2020."

5. The SLP filed by the Revenue bearing Diary No.27023 of 2020 against the order of Hon'ble High Court is still pending admission. In absence of any admission or stay from Hon'ble Supreme Court, there is no appropriate reason for not following the judicial precedent available in form of the order of Hon'ble

Gujarat High Court. Instructions issued by the CBIC to its officers cannot be a reason for not following the well settled principles of judicial discipline and precedence. In any case the impugned order which relies on the said order of Hon'ble Gujarat High Court cannot be faulted with for this reason.

6. In view of the above discussions, as the issue is squarely covered, we do not find any merits in the appeal filed by the Revenue. Accordingly, the appeal is dismissed.

(Operative part of the Order pronounced in open court)

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS