CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH – COURT NO. 1

Appeal(s) Involved:

Service Tax Appeal No.236 of 2009-DB

[Arising out of Order-in-Appeal No. 169 of 2008 dated 29/09/2008
passed by Commissioner of Central Excise, Customs & Service Tax
(Appeals), Cochin.]

M/s. Sri Asoka Textiles Ltd. Asokapuram, Post Box No.17, Aluva – 683 101, Kerala.	**Appellant(s)**

VERSUS

The Commissioner Of Central Excise, C.R. Buildings, I.S Press Road, Cochin-682018 Kerala	**Respondent(s)**

APPEARANCE:

Mr. T. Muraleedharan, Advocate CENTRAL TAX ASSISTANCE BUREAU KARIMPATTA ROAD, ERNAKULAM, COCHIN-682016 KERALA	For the Appellant
Mr. K.B. Nanaiah, Assistant Commissioner (AR)	For the Respondent

DATE OF HEARING: 3 DECEMBER, 2019
DATE OF DECISION: 9 DECEMBER, 2019

CORAM: HON'BLE SHRI S.S GARG, JUDICIAL MEMBER
HON'BLE SHRI C.J. MATHEW, TECHNICAL MEMBER

FINAL ORDER NO. 21202 /2019

PER : C.J. MATHEW

M/s Ashoka Textiles Ltd. is before us against order-in-appeal no. 169/2008 ST dated 29th September 2008 of Commissioner of Central Excise, Customs & Service Tax (Appeals), Kochi in which the order of the original authority confirming demand of Rs.2,04,886, directing reversal of CENVAT credit of Rs.2,90,226 and charging interest on the same besides imposing a penalty under section 76 of Finance Act, 1994 was upheld on one of the issues, while the second was ordered for reconsideration in remand proceedings.

2. Proceedings were initiated against the appellant for having availed eligible CENVAT credit of tax paid, on 'reverse charge', as recipient of 'goods transport agency service', as well as of tax paid on a number of other services procured by them, to discharge the tax liability arising, as 'reverse charge', on freight paid for dispatch of goods between January 2005 and September 2005.

3. From the records, it appears that the appellant was alleged to have been liable to service tax of Rs.2,44,427 as the recipient of 'goods transport agency service' between January 2005 and September 2005 on inward and outward freight on which tax of Rs.39,541 had been discharged against challans while paying the rest by debit of CENVAT credit account for which the differential tax of Rs.2,04,886 was sought to be recovered. It would also appear that, between January 2005 and September 2005, allegedly ineligible credit of Rs.79,960 that had been utilized for discharge of tax due as the recipient of 'goods transport agency service' which was also sought to be recovered.

4. In the order of the original authority, the latter component of the demand was dropped as the tax dues in the first component was found to be included the second. The differential tax, as computed in the show cause notice, was confirmed on the ground that, while the tax paid on 'reverse charge' could be availed as credit, such credit could not be utilised for discharge of the tax leviable on the recipient of 'goods transport agency service.'

5. It is also seen that the order of the original authority was issued without hearing the noticee who had pleaded for time to secure the records

from the non-functional unit. In the appeal before the first appellate authority, it was also contended that the computation of differential tax did not take into account eligibility for abatement provided for in notification no. 32/04-ST dated 3rd December 2004.

6. We have heard Learned Counsel for the appellant and Learned Authorized Representative.

7. It is seen from the impugned order that the first appellate authority has not disposed of the two principal grounds of appeal before him. It is also seen that he has framed two issues for decision and has surrendered his findings thereon without adducing to any statutory provisions or the applicability of any judicial decision. Furthermore, it is seen that the issue of utilisation of credit for discharge of tax payable on 'outward freight' was remanded back to ascertain the factual conformity with the decision of the Tribunal in ***Gujarat Ambuja Cements Ltd v. Commissioner of Central Excise, Ludhiana [2007 (212) ELT 410 (Tri-Del)].***

8. In view of the non-consideration of grounds that have a bearing on principles of natural justice, we consider it appropriate to set aside the impugned order in its entirety and remand the matter back to the original authority for fresh consideration of all the issues raised in the show cause notice after hearing the noticee.

(Order was pronounced in Open Court on **09/12/2019**.)

(S.S GARG)
JUDICIAL MEMBER

(C.J. MATHEW)
TECHNICAL MEMBER

Rv.