CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 41037 of 2019

(Arising out of Order-in-Appeal No. 95/2019 (CTA-I) dated 06.03.2019 passed by the Commissioner of G.S.T. and Central Excise (Appeals-I), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. MRF Limited, **: Appellant**
Eripakkam Village, Nettapakkam Commune,
Puducherry – 605 106

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Puducherry Commissionerate,
No. 1, Goubert Avenue, Beach Road,
Puducherry – 605 001

APPEARANCE:

Shri. Karthik Sundaram, Advocate for the Appellant

Shri. M. Jagan Babu, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 41282 / 2019

DATE OF HEARING: 03.10.2019

DATE OF DECISION: 03.10.2019

This appeal is filed by the assessee against the Order-in-Appeal No. 95/2019 (CTA-I) dated 06.03.2019 whereby the Ld. Commissioner (Appeals) has upheld the denial of CENVAT Credit.

2.1 Today when the matter was taken up for hearing, Shri. Karthik Sundaram, Ld. Advocate appearing for the assessee-appellant, vehemently contended that the Revenue has raised the very same demand which was deleted earlier by this very Bench and therefore, the impugned order is not sustainable.

2.2.1 He referred to the Order of this Bench in *Final Order No. 1834 of 2009 dated 27.11.2009* for the period March 2005 to January 2006, which is placed at pages 46 to 50 of the Appeal Memorandum, wherein this Bench has *inter alia* held in favour of the assessee after recording the facts that the appellant during the course of manufacture of 'pneumatic tyres' availed the credit of duty paid on inputs and capital goods and Service Tax paid on input services and had paid Service Tax of Rs. 2,52,476/- through debit in their CENVAT Account of inputs and capital goods as they were the persons liable to pay the same on GTA Services which was taken as input service credit; the Show Cause Notice and Adjudication Order were considered and finally it was held that the appellant was entitled to utilize the credit of tax paid on input GTA Services availed by them for payment of Service Tax.

2.2.2 Ld. Advocate would also submit that against this Order, the Revenue filed appeals before the Hon'ble High Court of Judicature at Madras in C.M.A. Nos. 1558 and 1559 of 2010, and vide Order dated 02.07.2015, the Hon'ble High Court had dismissed the appeals thereby upholding the order passed by this Bench and the matter has thus become final.

2.3 Ld. Advocate further submitted that for the other period i.e., from February 2005 to February and March 2006 wherein the demand of Rs. 2,98,186/- was raised, this very Bench vide its Order in a batch of appeals in the case of ***M/s. Iswari Spinning Mills, Dindigul Vs. C.C.E., Madurai & 49 ors. vide Final Order Nos. 226 to 275 of 2011 dated 04.02.2011*** disposed of the appeals, in which even the assessee was one of the appellants therein. Ld. Advocate further argued that inspite of the above, the Revenue issued a Show Cause Notice dated 18.03.2011 alleging that the appellant had taken credit of Rs. 2,98,186/- on the GTA Services received by them during the period from June 2005 to March 2006 to which the appellant was not entitled to and thereby proposing to disallow and recover the same along with applicable interest. The appellant having filed its reply had *inter alia* contended that the very issue itself had been decided in their favour by the Tribunal, but however, the Adjudicating Authority vide Order-in-Original dated 26.09.2018 confirmed the demand and thereafter, the same has been upheld by the First Appellate Authority vide impugned order.

2.4 Ld. Advocate concluded that the demand amounts to double levy by two different Officers, which is not sustainable.

3. *Per contra*, Shri. M. Jagan Babu, Ld. Departmental Representative appearing for the Revenue, supported the findings of the lower authorities.

4.1 I find, after going through the documents placed on record as also after hearing both sides, that the very same demand was challenged before this Bench which had been decided vide Final Order *(supra)*, against which apparently no appeal has been filed nor has the Revenue brought on record any order of a higher forum wherein the Order of this Bench dated 04.02.2011 is set aside.

4.2 This Bench in its earlier Order passed vide *Final Order (supra)* dated 04.02.2011 has categorically held as under :

> *"8. As regards the period beyond 18.04.2006, it has been stated by both sides that only a few of these appeals involve periods beyond 18.04.2006 also (from 19.04.2006 but prior to 01.03.2008, when the Service Tax Law was further amended). In respect of this period, a few of the learned counsels have argued that despite the deletion of Explanation to Rule 2 (p) of the CENVAT Credit Rules, 2004 on 19.04.2006, the manufacturer-assessees should be deemed as service providers in view of the legal provision imposing the burden of paying service tax on them for GTA service received by them, till the law was further amended on 01.03.2008. This contention is opposed by the Department. I find that all the decisions which are in favour of the assessee-appellants/respondents have held*

> *them to be service providers for the period up to 18.04.2006 solely on the ground of the Explanation to the definition of output service under Rule 2 (p). Hence, with the deletion of the Explanation with effect from 19.04.2006, the benefit of these decisions cannot be extended to them for the period from 19.04.2006. As far as the period beyond 18.04.2006 is concerned, the Tribunal in the case of Alsthom Ltd. Vs. C.C.E. – 2008 (12) S.T.R. 23 has also dealt with the issue for this period and has held in that case that the credit cannot be utilized for paying service tax for this period as well. As such, as far as the period beyond 18.04.2006 is concerned, I hold that the appellant/respondent-assessees are not entitled to utilize CENVAT Credit for payment of service tax on GTA service and therefore, the duty demand and demand of interest are justified. However, considering the disputed nature of the issue, I hold that imposition of penalty in respect of the period from 19.04.2006 to 28.02.2008 is not justified and wherever penalties have been imposed, the same are set aside."*

5. I am therefore of the view that the impugned order has once again raised the same demand which has already been settled in favour of the assessee. The only proper course would have been to challenge the same further rather than knocking at the back door, which is not permissible.

6. Therefore, the demand confirmed in the impugned order and the impugned order, are set aside.

7. The appeal is allowed with consequential benefits, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-

(P. DINESHA)
MEMBER (JUDICIAL)

Sdd