IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI

E/313/2010

(Arising out of Order-in-Original No.4/2010 dated 03.03.2010 passed by the Commissioner of Central Excise, Chennai-I Commissionerate, Chennai).

M/s. Hinduja Foundries Ltd. — Appellant

Vs.

CCE, Chennai-I — Respondent

Appearance

Shri M. Kannan, Advocate
for the appellant

Shri K. Veerabhadra Reddy, JC (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing/Decision: **24.10.2017**

FINAL ORDER No. 42426 **/2017**

Per: Archana Wadhwa,

The appellants who are engaged in the manufacture of 'Cast articles of Iron and Aluminium' has leased windmills and are using various input services for the running of the said windmills. Electricity generated at the windmills is transmitted to the

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Tamilnadu Electricity Board (TNEB in short) grid and subsequently re-drawn from the grid for use in the factory premises. The appellants availed Cenvat credit of service tax paid on various services used at the said windmills.

2. Revenue by entertaining a view that as windmills are situated at far away place from the factory as also electricity generated therein is not directly used by them in their factory, proposed to deny the Cenvat credit so availed by the assessee on various services. Such proposal resulted in denial of credit along with confirmation of interest.

3. The present impugned order stands passed by the Commissioner and is the subject matter of the present appeal. It stands brought to our notice by the Ld. Advocate that the issue of the same assessee for the earlier period was the subject matter of the Tribunal decisions being Final Order Nos. 40281-40326/2015 dated 25.02.2015, vide which denial of Cenvat credit was set aside and the appeals were allowed. Ld. Advocate also clarifies that such relief was extended to the appellants by relying upon the Hon'ble Bombay High Court decision in the case of CCE, Ahmedabad Vs. Endurance Systems Pvt. Ltd. – 2017 (52) STR 361 (Bom.).

4. Ld. DR appearing for the Revenue submits that the earlier order of the Tribunal in the assessee's own case stands appealed against by the Revenue and such appeal stands admitted by the

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Hon'ble High Court. However, he fairly agrees that there is no stay of operation of the said order of the Tribunal.

5. In as much as the issue between the parties already stands decided by the Tribunal vide order referred supra, we deem it fit to extend the same benefit to the appellant by following the earlier order. It is a well settled law that mere filing of appeal before the higher forum, does not wipe out the effect of declaration of law, unless stayed by the High Court.

6. In view of the above, we set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Order dictated and pronounced in the open Court on)

26/10/17

(MADHU MOHAN DAMODHAR)
TECHNICAL MEMBER

26/10/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

BB

Customs, Excise & Service Tax Appellate Tribunal

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