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

E/41919/2013

(Arising out of Order-in-Appeal Nos. 5/2013 (M-II) (D) dated 08.05.2013 passed by the Commissioner of Customs, Central Excise and Service Tax (Appeals-I) Chennai).

M/s. Cassel Research Laboratories Pvt. Ltd. Appellant

Vs.

CCE, Chennai-IV Respondent

Appearance

Shri G. Natarajan, Advocate
for the appellant

Shri Arul C. Durairaj, Suptd. (AR)
for the Respondents

CORAM :

Hon'ble Smt. ARCHANA WADHWA, JUDICIAL MEMBER

Date of Hearing/Decision: **27.10.2017**

FINAL ORDER No. 42498 **/2017**

After hearing both sides, I find that during the year 2005-07, the appellants availed the benefit of Cenvit credit of duty paid on the Capital goods so received by them, in terms of the provisions of the Cenvat Credit Rules. Such credit on capital goods is available to the assessee subject to not claiming the depreciation from the Income Tax Department.

2. It ~~is~~ so happened the appellants also availed depreciation from the Income tax department, for the said period, in respect of

such cenvatable capital goods, in which case the benefit of Cenvat credit would not have been available to them. As per the appellants, such availment of depreciation simultaneously along with availing Cenvat credit was under a mistake. However, as the said mistake cannot be rectified by them before the income tax authorities in the same year, on account of time lapse, they rectified the same in the returns ~~they~~ filed for the next year 2008-09. Benefits so availed by them in the first income tax returns were reversed in the second one and adjustments were sought. For the above proposition, they placed on record the returns filed by them along with assessment made under Section 143 (1) of the Income Tax Act, 1965.

3. In the above scenario, proceedings were initiated against them proposing denial of credit. The original adjudicating authority, by taking note of the above developments, extended the benefit to the assesse and vacated the SCN. The said order of the original adjudicating authority was appealed against by the Revenue before the Commissioner (Appeals) ~~Which~~ who reversed the order. Thereafter, an appeal was filed before the Tribunal and the Hon'ble Member Judicial rejected the appeal of the assesse, on the ground that the appellant failed to submit the income tax assessment order to substantiate that the depreciation claimed on the capital goods was reversed. The said order of the Tribunal being Final Order No. 41819/2016 dated 07.10.2016, was challenged by the appellant before the Hon'ble High Court of Madras. The Hon'ble High Court vide its order dated 10.04.2017 observed that the assessment was made under 143 (1) of the ITA,

1965, and in so far this aspect of the matter is concerned the only evidence in a situation, which could have been adduced, ~~so the~~ was the AD copy of the ~~written compliant~~ return filed AD accompanied by the requisite receipt. Accordingly, the Hon'ble High Court remanded the matter for fresh decision in the light of the observations made by them.

4. I find that the appellants have placed on record the rectified return filed by them under Section 143 (1) of ITA, 65 along with the requisite receipt in terms of the Hon'ble High Court order. The said action of the assesse would satisfy the legal requirements of law. The assessment made under Section 143 (1) of the ITA, even though for the period 2008-09, reflects upon the facts that the wrong claims made by the assessees for the year 2005-2007 stands wiped out thus, making the appellant entitled to the benefit of Cenva credit of duty on the capital goods from the period when it was availed.

5. In view of the foregoing, I set aside the impugned order and allow the appeal with consequential relief, if any, to the appellants.

(Order dictated and pronounced in the open Court on)

30/10/17

(ARCHANA WADHWA)
JUDICIAL MEMBER

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