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

E/6/2008 and E21/2008

(Arising out of Order-in-Original No. 7/2007 (Commr.) dated 13.11.2007 passed by the Commissioner of Central Excise, Salem and Order-in-Original No. 8/2007 dated 16.10.2007 passed by the Commissioner of Central Excise, Madurai)

M/s. Sakthi Auto Components Ltd.
M/s. TVS Sri Chakra Ltd. Appellants

Vs.

CCE, Salem & Madurai Respondents

Appearance

Shri S. Muthuvenkataraman, Advocate for the Appellant
Shri K.P. Muralidharan, AC (AR) for the Respondent

CORAM

Hon'ble Shri D.N. Panda, Judicial Member
Hon'ble Shri Madhu Mohan Damodhar, Technical Member

Date of Hearing / Decision: **30.01.2017**

Final Order Nos. 40162-40163/2017

Per D.N. Panda

Appellants submission is that finished goods cleared from its factory for delivery at the buyer's premise using the transport service and paying service tax thereon, when claimed such tax as CENVAT credit, Revenue has denied the same on the ground that transport service is not input service to make the alleged claim.

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2. The issue above was before the Hon'ble High Court of Madras in the case of **Commissioner of Central Excise, Chennai Vs. Borg Warner Morse Tec Murugappa Pvt. Ltd. reported in 2015-TIOL-831-HC-MAD**. The Hon'ble Court following the decision of the Hon'ble High Court of Karnataka in **Commissioner of Central Excise Vs. ABB Ltd. reported in 2011-TIOL-395-HC-KAR**, held that the transport service availed suffering service tax is input service entitled to enjoy CENVAT credit even though the delivery of finished goods was made at the buyer's premise.

3. Revenue does not disagree with the legal proposition stated above.

4. Heard both sides and perused the records.

5. In the course of argument, it was pointed out by learned counsel that in both the cases the period in dispute is **prior to 1.4.2008**. Law at the relevant period had mandate that the transport service availed for delivery of goods at a destination upon removal of the goods from factory entitles the appellant to the credit of the service tax paid on the transport service availed. In absence of any statutory bar to confine destination of delivery to a particular place in section 2(l) of CENVAT Credit Rules, 2004, there cannot be presumption that the delivery at the buyer's point shall disentitle the appellant to the input service credit of the service tax paid on transport service

availed. Therefore, following the decision of the Hon'ble Madras High Court and the statutory provision contained in Rule 2(l) of CENVAT Credit Rules, 2004, both the appeals are allowed.

(Dictated and pronounced in open court)

08/02/2017

(**MADHU MOHAN DAMODHAR**)
Technical Member

6/2/2017

(**D.N. PANDA**)
Judicial Member

Rex

Excise & Service Tax Appellate Tribunal

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चेन्नै/Chennai