CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Sl. No.	Appeal No.	Appellant (s)	Respondent (s)	Impugned Order
1.	ST/1146/2010	CC, CE & ST, Hyderabad –IV	Vijay Electricals Ltd.,	OIO No. 04/2009 – ST (Commnr.) dated 28.12.2009
2.	ST/1354/2010	Vijai Electricals Ltd.,	CC, CE & ST, Hyderabad-IV	-do-
3.	ST/3034/2012	-do-	-do-	OIA No. 185/2012 (H-IV) S. Tax dated 23.07.2012

Appearance
Shri B. Venugopal, Advocate for the Appellant.
Shri Arun Kumar, Deputy Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 27/09/2018
Date of Decision:24/10/2018

FINAL ORDER No. A/31341-31343/2018

[Order per: M.V. Ravindran]

All these three appeals are disposed of by a common order has they are against the Order-in-Original No. 04/2009 – ST (Commnr.) dated 28.12.2009. Appeal No. ST/1354/2010 and ST/3034/2012 are filed by appellant assessee while appeal No. ST/1146/2010 is filed by the Revenue.

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2. The relevant facts that arise for consideration in these appeals is regarding the eligibility to avail CENVAT credit of service tax paid under reverse charge mechanism on goods transport agency during the period March, 2005 to March 2008 and October, 2009 to September, 2010.

3. Appellant herein during the period March, 2005 to March, 2008 availed CENVAT credit of service tax paid by them under goods transport agency for the transportation of transmission line materials manufactured by them, to their purchasers end. On a presumption that they are eligible for such CENVAT credit as the contract entered by them with various Power Grid Corporations indicates the cost of transmission line materials as Ex-works. The same understanding made them avail CENVAT credit during the period October, 2009 to September, 2010.

4. Learned Counsel after taking us through the case records submits that appellant is a manufacturer of transmission line materials during the relevant period, successfully won the contract for supply, erection, commissioning or installation of such transmission line materials. He draws our attention to the various clauses of agreement, entered by them, which indicates the appellant is required

to supply, install, erect and commission of the transmission lines; in pursuance of which, appellant herein had cleared the transmission line materials paying the service tax liability on GTA services and availed the CENVAT credit. It is his submission that for the period prior to 01.04.2008, the law is now settled in as much the service tax paid on outward transportation of the finished goods is eligible for availment of CENVAT credit by the Apex Court in the case of *Commissioner of Central Excise, Belgaum Vs. Vasavdatta Cements Limited* [2018 (11) G.S.T.L. (3) (S.C)], again in the case of *Commissioner of Customs, Central Excise and Service Tax, Guntur Vs. Andhra Sugars Limited* [2018 (10) G.S.T.L. (12) (S.C)]. As regards the CENVAT credit availed on the service tax paid for the period October, 2009 to September, 2010, he submits that the Bench may take a view has they have discharged the service tax liability along with interest at the same time, he prays for setting aside the penalty imposed.

5. Learned Departmental Representative submits that the issue as to eligibility to avail CENVAT credit of service tax paid on outward transportation of the goods is one of the question in these proceedings. He submits that appellant is a manufacturer of transmission line materials and at the same time enters into another contract for rendering services of erection, commissioning and installation services. On which, he discharges the service tax liability and the goods transportation services is used for rendering the services of erection, commissioning and installation charges are used for transportation of transmission line materials which were already prepared for Power Grid Corporation, hence, availment of CENVAT

credit availed by the appellant is wrong. As regards the Revenue's appeal, it is the submission that the adjudicating authority while confirming the demands raised for the period March, 2005 to March, 2008, has not imposed any penalty under Section 78 of the Finance Act, 1994, despite, the section being invoked in the show cause notice and demand being confirmed, the penalty imposed has to be enhanced to equivalent amount of service tax liability confirmed.

6. On careful consideration of submissions made, we find that the issue is regarding service tax liability under reverse charge mechanism on the goods transport agency and availment of CENVAT credit thereof by the appellant.

7. It seen from the records, that the appellant is a manufacturer of transmission line materials and has entered into two contracts with Power Grid Corporation for supply of transformers and materials and separate contract for erection of such transformers and transmission lines. It is seen from the records and the agreement with Power Grid Corporation, the said agreement clearly indicates that appellant is required to supply the material / equipments transport the same erect and commission the transmission lines.

8. The demands which have been confirmed by the Adjudicating Authority in this case can be spread out into two separate periods. First period prior to 01.04.2008 and second post 01.04.2008.

9. As regards the eligibility to avail CENVAT credit on the service tax paid on goods transport agency prior to 01.04.2008, we find there is no dispute as to the fact that such service tax liability has been discharged by the appellant under reverse charge mechanism, availed the CENVAT credit of service tax which, we find is correct as the agreement with Power Grid Corporation indicates that the cost of equipments/transmission line materials were Ex-works and appellant is required to deliver the same at site and Power Grid Corporation have issued the same to appellant for executing the contract of erection, commissioning and installation services. CENVAT credit availed by the appellant on the service tax paid under reverse charge mechanism for transport charges for this period, is correct as held by the Supreme Court in the above cited cases. We find that Apex Court in the case of *Ultra Tech Cement Ltd.,* [2018 (9) G.S.T.L. (337) (S.C)] has also held so. In view of the situation that the law has been now settled for the period prior to 01.04.2008, which in favour of the appellant, demands confirmed against the appellant are unsustainable and liable to be set aside and we do so. Consequently, the interest and penalties imposed are also set aside. Revenue's appeal No. ST/1146/2010 is against the impugned order which has confirmed the demands raised by the appellant invoking the extended period and for the period prior to 01.04.2008. Since, we have accepted the contentions of the appellants that CENVAT credit is correctly availed of the service tax paid on outward transportation of the goods, following the judicial pronouncements of the Apex Court, we hold that the Revenue's appeal needs to be rejected and we do so. In this situation, appeals filed by

the appellant against the confirmation of the demands for the period 01.04.2008 are allowed and Revenue's appeal stands rejected.

10. As regards the confirmation of demands for the period post 01.04.2008, we do find merits in the findings recorded by the lower authorities. It is seen that the Apex Court in the decisions (as cited herein above) has categorically held that CENVAT credit of the service tax paid on goods transport agency which are eligible to till 01.04.2008 and not for the subsequent period. Respectfully following the same, we hold that the appeal filed by the appellant (ST/3034/2012) is devoid of merits and needs to be rejected and we do so. The demands confirmed along with interest are upheld and the appellant having paid so as recorded in the adjudication order, the same stands appropriated. As regards the penalty imposed in this appeal, since the issue was settled by the Apex Court in 2018, we find that there is no reason to visit appellant with any penalty. Accordingly, penalty imposed on the appellant in this appeal is set aside.

11. The appeals stands disposed of as indicated herein above.

(Order pronounced on 24/10/2018 in open court)

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

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