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

Appeal No. E/30718/2018

(Arising out of Order-in-Appeal No. HYD-EXCUS-MD-AP2-0181-17-18-CE, dated 19.01.2018 passed by Commissioner of GST & Central Excise (Appeals-II), Hyderabad)

M/s Shakti Hormann Pvt. Ltd., ...Appellant(s)

Vs.

Commissioner of Central Tax, Central Excise & Service Tax, Medchal - GST .....Respondent(s)

Appearance
None for the Appellant.
Shri Bhanu Kiran, Assistant Commissioner (AR) for the Respondent.

Coram:
Hon'ble Mr. P. Venkata Subba Rao, Member (Technical)

Date of hearing: 11/12/2018
Date of decision: 11/12/2018

FINAL ORDER No. A/31559/2018

[Order per: P. Venkata Subba Rao]

This appeal is filed against the Order-in-Appeal No. HYD-EXCUS-MD-AP2-0181-17-18-CE, dated 19.01.2018. None appeared on behalf of the appellant despite notice. However, it is found that the issue falls in a narrow compass and hence can be decided even in the absence of representation from the appellant.

2. Heard the Learned Departmental Representative and perused the records. The appellant herein is engaged in manufacture of steel doors, steel frames, etc., and have during the period April, 2006 to June, 2007 paid service tax on GTA services under reverse charge mechanism and claimed credit of the service tax so paid. This credit was availed on outward transportation of the goods from factory

to buyers' premises as the terms of sale were FOR destination. A show cause notice was issued to them demanding reversal of credit on the ground that the credit is not admissible beyond the place of removal. It further alleged that the outward transportation of the goods has no connection with manufacturing activity and hence the service tax paid is not eligible for credit. The appellant contested the demand on merits. After following due process, the Original Authority confirmed the demand and imposed penalty under Section 11AC of the Central Excise Act read with Rule 15 of CENVAT Credit Rules, 2004. The appellant challenged this order before the First Appellate Authority on the ground that the credit was admissible prior to 01.04.2008 when the limitation of credit on input services 'up to the place of removal' was introduced. He also challenged the demand on the ground of limitation of time. The First Appellate Authority upheld the impugned order and rejected the appeal. Hence this appeal on the following grounds,

i) The definition of input service under CENVAT Credit Rules, 2004 during the relevant period uses the words "used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal ...". The words "from the place of removal" were replaced with "up to the place of removal" after 01.04.2008. Since the relevant period is prior to 01.04.2008 they were eligible for CENVAT credit.

ii) The credit on outward transportation of goods is admissible even after amendment of input service w.e.f. 01.04.2008 has held by the Hon'ble High Court of Karnataka in the case of ABB [2011 (23) STR 97 (Kar. HC)].

iii) In the case of Gray Gold Cements Ltd., [2014 (34) STR 809] the Hon'ble High Court of Andhra Pradesh held that credit on transportation of goods from place of removal upto buyers premises is available on the ground that service tax being a consumption of service tax as owned by the customer.

iv) The notice was issued on 08.06.2010 covering the period April, 2006 to June, 2007 and is therefore hit by limitation as there is no evidence that the credit has been availed by fraud, willful mis-statement or suppression of facts with intent to evade payment of duty.

3. I have considered the facts of the case and arguments made by Learned Departmental Representative. The short point to be decided is whether CENVAT credit on input services is admissible on GTA services for outward transportation of goods from factory to the premises of the customers prior to 01.04.2008. This issue is no longer res integra and has been settled by the Hon'ble Apex Court in the case of *Andhra Sugars Ltd.,* [2018 (10) GSTL 12 (S.C.)] and *Vasavadatta Cements Ltd.,* [2018 (11) GSTL (3) (S.C.)] in favour of the assessee. Respectfully, following the ratio of these judgments, I find that the appeal is liable to be allowed and I do so. The appeal is allowed and the impugned order is set aside.

(Operative portion of this order was pronounced in open court on conclusion of hearing)

(P. VENKATA SUBBA RAO)
MEMBER(TECHNICAL)

Lakshmi….