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

APPEAL No. ST/811/2011
(Arising out of **Order-in-Appeal** No. 01/2011(H-IV)/ST, dated 31.01.2011 passed by CCCE&ST (Appeals-II), Hyderabad)

VIJAI ELECTRICALS LIMITED .. APPELLANT

Vs

CCCE&ST, Hyderabad-IV .. RESPONDENT

Appearance
Shri B. Venugopal, Advocate for the appellant

Shri A.V.L.N. Chary, Superintendent/AR for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 17.01.2019
Date of Decision: 17.01.2019

FINAL ORDER No. A/ 30116 /2019

[Order per: Mr. M.V. Ravindran)

1. This appeal is directed against Order-in-Appeal No. 01/2011(H-IV)/ST, dated 31.01.2011.

2. The relevant facts that arise for consideration in this case is during the period April 2008 to September 2009, appellant herein availed CENVAT

Credit of various service taxes paid by them under "Goods Transport Agency Service" for transportation of transmission line materials manufactured by them to their purchasers; this was on the presumption that they are eligible for CENVAT Credit as the contract entered by them with various Power Grid Corporations indicates the cost of transmission line materials as Ex. Works. Lower authorities were of the view that service tax liability under GTA services arises on the appellant, coming to such a conclusion issued a show cause notice to appellant demanding service tax with interest and proposing to impose penalties. The adjudicating authority confirmed the demands raised along with interest and imposed penalties, the first appellate authority also concurred with the view of the adjudicating authority.

3. Ld. Counsel submits that identical issue of the very same assessee appellant, was before the Bench in Appeal Nos. ST/1354/2010 and ST/3034/2012 and this Bench by Final Order No. A/31341-31343/2018, dated 24.10.2018 held that post 01.04.2008, CENVAT Credit cannot be availed of such service tax paid on GTA services but set aside the penalty.

4. Ld. DR reiterates the findings of the lower authorities.

5. On careful consideration of the submissions made by both sides and perusal of records, we do find that the issue involved in this appeal is identical to the issue involved in the appeals of the assessee which were decided by this Tribunal vide Final Order dated 24.10.2018. The Bench

has given detailed findings in paras No. 9 & 10 of the order dated 24.10.2018, holding that tax liability arises on the appellant which is reproduced.

> "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.
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> 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.
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> 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 Appeal Nos. ST/1146, 1354/2010 & ST/3034/2012 6 the appellant against the confirmation of the demands for the period 01.04.2008 are allowed and Revenue's appeal stands rejected.
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> 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.
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> 11. The appeals stands disposed of as indicated herein above."

6. We do not find any reason to deviate from such a view already taken. Accordingly, following the same, we hold that appellant is not eligible to avail CENVAT Credit of the service tax paid on Goods Transport Agency Services, post 01.04.2008 and the demand was correctly confirmed along with interest. At the same time, we also set aside the penalties imposed in those cases as being unwarranted due to the taxability of GTA services was being agitated before various forums. Adopting the same ratio, invoking the provisions of Section 80 of the Finance Act, 1994, we set aside the penalties imposed on the appellant in this case.

7. Appeal stands disposed of as indicated herein above.

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

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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