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

Appeal No. ST/669/2009

(Arising out of Order-in-Appeal No. 54/2009 (V-I) ST dated 27.04.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s L G Polymers India Pvt. Ltd., ...Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam - I .....Respondent(s)

Appeal No. ST/895/2009

(Arising out of Order-in-Appeal No. 78/2009 (V-I) ST dated 31.07.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals), Visakhapatnam)

M/s L G Polymers India Pvt. Ltd., ...Appellant(s)

Vs.

Commissioner of Customs, Central Excise & Service Tax, Visakhapatnam - I .....Respondent(s)

Appearance
Shri B. N. Gururaj, Advocate for the Appellant.
Shri Guna Ranjan, Superintendent (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: 17/01/2019
Date of Decision: 17/01/2019

FINAL ORDER No. A/30121-30122/2019

[Order per: M.V. Ravindran]

These two appeals are directed against Orders-in-Appeal No. 54/2009 (V-I) ST dated 27.04.2009 & 78/2009 (V-I) ST dated 31.07.2009.

2. Heard both sides and perused the records.

3. The issue involved in this case is regarding taxability of the amounts paid by the appellant to various transport authority/individual owners of truck for transferring of styrene monomer from port to appellant premises during the period January, 2005 to July, 2006 and August, 2006 to June, 2007.

4. From the records, it is noticed that the appellant is manufacturer of chemicals and imports of raw material called styrene monomer for used in the factory, the said styrene monomer transported in bulk and stored in Visakhapatnam port area. The Appellant hire tankers for transportation of this raw material to the factory in Visakhapatnam itself. It is the case of the Revenue, that amount paid by the appellant for transportation through tankers is taxable under reverse charge mechanism in the hands of the appellant. Appellant is contesting the said demand.

5. Learned Counsel submits that on similar issue in respect of very same assessee this bench has taken a view as reported at [2018 (10) TMI 553- CESTAT, Hyderabad]. It is his submission that in the earlier case, as cited, Adjudicating Authority had extended them abatement of 75% on the value of the freight. While, in these cases both the lower authorities have not extended any abatement of 75% on the total freight charges paid which is incorrect.

6. Learned Departmental Representative reiterates the findings of the lower authorities.

7. On careful consideration of submissions made, we do find that identical issue for the earlier period came up before the bench and

it was held by an order dated 12.09.2018 (cited) that service tax liability arises on the appellant. We do not find any reason to deviate from such a view already taken.

8. As regards the submissions made by the Learned Counsel that both the lower authorities have not extended the benefit of abatement of 75% on the freight value, we do find it so. The submissions of the Counsel are acceptable and we find strong force in those submissions that the benefit of abatement of 75% on the freight value is eligible to the appellant, this 75% of the abatement of the freight value of the appellant needs to be extended which is considered in earlier two appeals. The adjudicating authority shall re-calculate the tax liability by extending abatement of 75% of the freight value and calculate the tax payable along with interest and appellant will discharge the same immediately.

9. Since, the issue involved in this case was being agitated in various courts, the penalty imposed by the lower authorities are unwarranted and are set aside. We set aside the penalty invoking the provisions of Section 80 of the Finance Act, 1994. Appeals stands disposed of as indicated herein above.

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

P. VENKATA SUBBA RAO
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….