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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.09.2026

Pronounced on: 12.10.2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

CMA No. 1374 of 2018

AND

CMP NO. 225 OF 2022

The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.

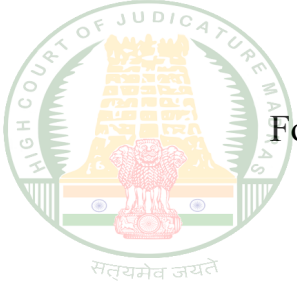
..Appellant(s)

Vs

M/s.Ascendas IT Park (Chennai) Ltd
1stFloor, International Park,
Taramani, Chennai.

..Respondent(s)

Appeal filed under Section 35G of Central Excise Act read with Section 83 of Finance Act, 1994, to consider the above substantial questions of law raised by the appellant and set aside the Final Order No.40110/2018 dated 17/01/2018 passed in Appeal No.ST/249/2012-DB passed by the Customs Excise & Service Tax Appellate Tribunal, South Zonal Bench Chennai.



For Appellant(s): Mr.RajendranRaghavan,
Senior Panel Counsel
for Mr.Su.Srinivasan,
Senior Panel Counsel

For Respondent(s): Ms.Mathangi.G.
for Mr.S.MuthuVenkataraman

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JUDGMENT

Dr.AnitaSumanth, J.

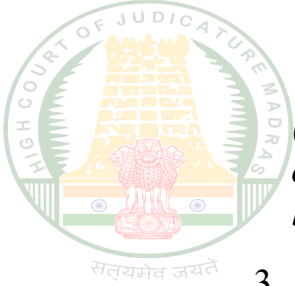
The appellant is the Department, and challenges an order of the Customs, Excise and Service Tax Appellate Tribunal (CESTAT / Tribunal) dated 17.01.2018.

2. The substantial questions admitted for resolution on 02.07.2018 are as follows:-

“i).Whether the decision of the Customs, Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai (CESTAT for short) given vide Final Order No.40110/2018 dated 17.01.2018 in allowing credit availed on input services for providing exempted services during the period 16.06.2005 to 01.06.2007 is correct?

ii) Whether CESTAT has erred in viewing the Board's Circular No.98/1/2008-ST dated 04.01.2008 as erroneous and irrelevant to the instant case for the period post 01.06.2007?

iii) Whether the Tribunal was correct or justified in applying the ratio laid down by the Apex Court in the case of Safety Retreading Co (P) Ltd v Commissioner of C.Ex.Salem, (48) S.T.R. 97(SC)?



(iv) *Whether the erroneous payment of sale tax on fit out charges would immune the respondent from liability of legally due service tax to the Government?"*

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3. We have heard Mr.Rajendran Raghavan, learned Senior Standing Counsel for Mr.Su.Srinivasan, learned Senior Standing Counsel for the Revenue and Ms.G.Mathangi, learned counsel for Mr.Muthu Venkataraman, learned counsel, for the assessee/respondent.

4. The facts as germane to decide the appeal are as follows. The assessee had filed returns under the applicable provisions of Finance Act, 1994 (Service Tax Act/Act), pursuant to which two show cause notices were issued for the periods 16.06.2005 to 01.06.2007 and April, 2009 to March, 2010 (periods/periods in question) on 22.04.2010 and 08.10.2010.

5. Among other issues, the assessee was called upon to show cause why the credit for the aforesaid period in question not be disallowed and recovered with interest under Rule 14 of CENVAT Credit Rules, 2004 read with the proviso to Section 73(1) and Section 75 of the Act and penalty under Rule 15(2) and 4 of CENVAT Credit Rules, 2004 and Sections 76 and 78 of the Act.

6. The assessee had relied on Rule 6(5) of the CENVAT Credit Rules, 2004 (2004 Rules), overruling which an Order-in-Original came to be passed on 25.01.2012 disallowing the credit as proposed, which the assessee carried to the CESTAT by way of appeal. The appeal was allowed on 17.01.2018, the



CESTAT accepting the contention of the assessee in regard to eligibility of credit.

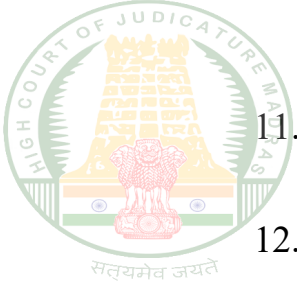
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7. Mr.Rajendran Raghavan, who appears for the Department submits that the CESTAT had erroneously granted the credit as Rule 6(5) was inapplicable to the case of the assessee. The Rules provide for a method of bifurcation of services in cases where the assessee was engaged in rendition of both taxable & exempt services.

8. Though the assessee was admittedly entitled to credit for services under the head 'Management, Maintenance & Repair Service' (MMR Services), credit had been availed in respect of 'Renting of Immovable Property Services' (RIP Services), that were exempt. Hence the credit had been disallowed correctly by the assessing authority and ought not to have been set aside by the Tribunal.

9. Per contra, Ms.G.Mathangi and Mr.Muthu Venkataraman, appearing for the assessee take us through the Scheme under Rule 6 which provides for a method of allocation of credit in respect of the services availed, specifically Rule 6(5), as per which they are entitled to full credit. They have cited a slew of several judgments.

10. As regards questions 2 to 4, relating to the claim of service tax on fit-outs charges post 01.06.2007, Mr.Rajendran relies on the Order-in-original.



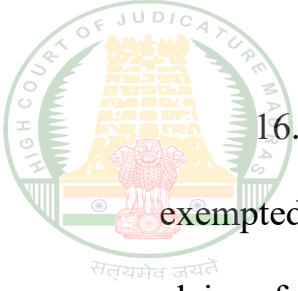
11. We have heard both learned counsel and perused the material papers.

12. The assessee is a Company engaged in the development and maintenance of an Information Technology Park (IT Park), holding service tax registration under the heads, Real Estate Agent, MMR and RIP services. Show cause notices had been issued for the period 16.06.2005 – 01.06.2007 on 22.4.2000 and April, 2009 to March, 2010 on 08.10.2010.

13. Several proposals were made under the notices and the issue touching upon these appeals relates to proposed reversal and recovery of CENVAT credit for the aforesaid periods. Substantial question no.1 relates to claim of credit for the period 16.06.2005 to 01.06.2007 and questions 2 and 3 to the period post 1.6.2007.

14. Admittedly, the assessee does not maintain a bifurcation of credit claimed qua each service and it has proceeded to avail the CENVAT credit in toto based on Rule 6(5) of the 2004 Rules.

15. The argument of the assessee that has been accepted by the CESTAT is that Rule 6(5) enables an assessee rendering the services set out in that sub-rule, to claim full credit of CENVAT, subject to the conditions set out therein. That condition is to the effect that the CENVAT credit ought not to relate '*exclusively to the services rendered in or in relation to the manufacture of exempted goods or providing exempted services*'.



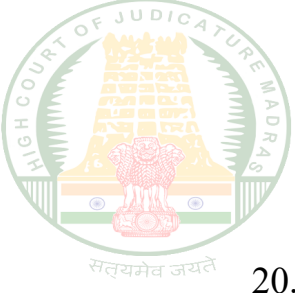
16. Rule 6 deals with the obligation of a manufacturer of dutiable and exempted goods and provider of taxable and exempted services in regard to the claim of CENVAT credit. Rule 6(1) states that the manner of claim shall be as per Rule 6(2), which stipulates that the service provider shall maintain separate accounts for receipt, consumption and inventory of the input and input services such that a proper bifurcation of credit is available, that may correlate to taxable and exempted services respectively.

17. Rule 6(3) sets out the method for claim in a case where the service provider opts not to maintain separate accounts and stipulates those situations where the claim may be made even without maintenance of separate accounts.

18. Rule 6(4) states that no CENVAT credit shall be allowed on goods used exclusively in the manufacture of exempted goods or provision of exempted services, other than the final products that are exempted from the whole of excise duty under a Notification where exemption is granted based on the value / quantity of clearances. In other words, Rule 6(4) stipulates the method for availment of CENVAT credit in case of capital goods.

19. Rule 6(5), relevant to this case, reads as follows:-

(5) Notwithstanding anything contained in sub-rules (1), (2) and (3), credit of the whole of service tax paid on taxable service as specified in sub-clause (g), (p), (q), (r), (v), (w), (za), (zm), (zp), (zy), (zdz), (zzg), (zzh), (zzi), (zzk), (zzq) and (zzr) of clause (105) of Section 65 of the Finance Act shall be allowed unless



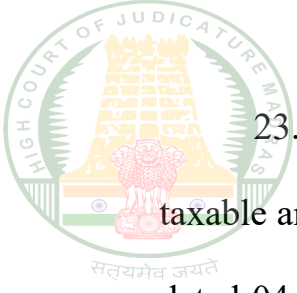
such service is used exclusively in or in relation to the manufacture of exempted goods or providing exempted services.

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20. Rule 6(5) is a code by itself and facilitates availment of credit of the whole of the service tax paid on specific taxable services as adumbrated in the clauses extracted above, Section 65(105)(zzg) relating to MMR Services rendered by this assessee/respondent. The language of the sub-rule is clear to the effect that credit is available to a service provider unconditionally, barring a situation where the services have been used '*exclusively in relation to*' the manufacture of exempted goods or provision of exempted services.

21. The assessee has rendered services in relation to RIP as well, which, for the period in question, are admittedly exempt. However, and admittedly, the credit has been used in respect of all output services including MMR and RIP services, and not exclusively in relation to RIP services alone.

22. Thus, even assuming that some portion of the credit relates to RIP Services, the phrase used in Rule 6(5) is '*exclusively in relation to the provision of exempted services*'. As it is admitted that the assessee is engaged in rendition of taxable services as well, the condition of 'exclusivity' is not attracted and the assessee thus succeeds.



23. For the period post 01.06.2007, the receipts from RIP Services was taxable and credit has been denied on the basis of Board Circular No: 98/1/2008 dated 04.01.2008. Reliance on the Circular has been rejected on the following reasoning and referring to the decision of the Andhra Pradesh High Court in *CCE Visakhapatnam v Sai Sahmita Storages (P) Ltd*¹:-

“While the issue sought to be clarified concerns eligibility of certain input services for output services, namely, renting of immovable property, the clarification thereof has veered into a proposition that ‘immovable property’ neither being subjected to Central Excise duty nor Service Tax, therefore input credit cannot be taken. The clarification has erroneously focussed on eligibility of the input services for ‘immovable property’ whereas the clarification should have been on eligibility of such input services for output service ‘Renting of Immovable Property’. The clarification of the circular will therefore have to be disregarded. In any case, it is not binding on this Tribunal. What is required to be seen is whether the input services have the necessary nexus with the output services and whether it is falling within the ambit of the definition of ‘input services’ in Rule 2(l) of the Cenvat Credit Rules, 2004 as existed during that period.”

24. We concur with the conclusions of the Tribunal as aforesaid and substantial questions 1 and 2 answered in favour of the assessee and against the Department. As far as question no.3 is concerned, no submissions have been made and hence we return the question as unanswered.

25. Coming to question no. 4 relating to liability to service tax in respect of fit-out charges, the authorities have noted that the business of the assessee

¹ 23 STR 341 (AP)



related to management of an IT park and lease of property for information technology services.

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26. The factual finding of the authority is categoric to the effect that the lease agreement encompassed the provision of fit-outs, as listed in the annexure.

The Order-in-Original has extracted relevant Clauses of the agreement as below:-

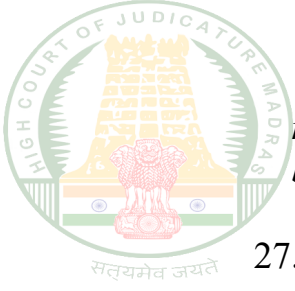
1.1 In consideration of the rent herein reserved and agreed to be paid by the hirer to the owner and the other mutual covenants contained herein, the owner shall provide to the hirer, leased properties with the fit-outs morefully enlisted in Annexure – A and further grant the right to use the same during the term of lease.

2.1 the owner agrees that the leased premises shall be duly fitted out and the said fitout premises shall be leased by the owner to the hirer on or before September 1 2005.

2.3 that in the event of any delay in handing over the fully fitted out leased premises beyond the September 01 2005, the hirer shall be entitled to occupy the premises for a corresponding period, without an obligation to pay any rent after the commencement of the lease. However, in case of a delay, in taking possession of the premises after receiving the aforesaid written notice, due to reasons attributable to the hirer the owner shall entitle for rents for the leased premises, from 01st September 2005.

3.7. The obligation of the hirer to pay the fit-out rent hereunder, shall end at the end of the seventh year from the lease commencement date (lease term) subject to the condition that no additional capital expenditure has been incurred on the fitouts by the owner on the request by the hirer during the course of the lease term, in which event, the owner and hirer shall mutually agree on the fit out rent for the period the lease is renewed. However, Base Rentals and operations and maintenance charges shall be payable by the hirer in respect of the leased premises during the fitout rent free period.

5.1 The owner confirms that they are the absolute owner of the fitouts with the right to give the same on hire, and the owner



reserves its right to raise a loan over the fitouts from a bank/financial institution of its choice.

27. On the basis of the documentation executed with the parties, the authorities had come to the conclusion that the fit-outs related to necessary infrastructure such as work stations, cabins and meeting rooms that were provided in the office space rented by the assessee to its clients.

28. The argument put forth by the assessee was that VAT had been paid and hence such payment would obviate the necessity for service tax. This argument has been negated by the authority on the ground that the provision of the fit-outs form part of the value of the immovable property rented out and hence the liability should encompass the same as well.

29. The Tribunal has reversed the order on the ground that the fit-outs related to movable items such as chairs and tables which were handed over to the tenants, and that VAT had been remitted on that consideration. The Tribunal renders a finding that VAT and service tax were exclusive and hence a demand of service tax should not be made on that component of consideration in respect of which VAT had been paid.

30. We find both factual as well as legal errors in the conclusion of the Tribunal. On facts, the fit-outs did not relate only to movables but other infrastructure such as workstations and the like, that were provided along with the office space rented out. In fact, these fit-outs formed part of the lease



agreements and a portion of the consideration would thus, in our view, have to necessarily be earmarked to them as well.

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31. On the position of law, we are of the considered view, that mere payment of VAT would not lead to the conclusion that no services tax is payable. We draw support from the judgement in *Imagic Creative Pvt. Ltd v Commissioner of Commercial Taxes & Others*², wherein the Supreme Court has concluded that service tax and VAT assessments were both possible in respect of the same transaction, if the foundational requirements for such assessments were justified on the basis of the facts arising in that case.

32. That apart and moreover, the authorities have noted there was no proof produced in support of the submission that VAT had been paid on the fit-outs. Substantial question 4 is thus answered in favour of the appellant / Department.

33. This civil miscellaneous appeal is ordered as above. No costs. Connected miscellaneous petition is closed.

(A.S.M.,J.) (C.K.,J.)
12.10.2026

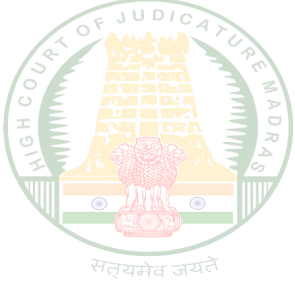
Index: Yes
Speaking order
Neutral Citation: Yes

ssm

²2008 (1) TMI 2 – Supreme Court



1. The Commissioner of GST & Central Excise,
Chennai South Commissionerate,
MHU Complex, No.692, Anna Salai,
Nandanam, Chennai-600 035.
2. The Customs Excise & Service Tax Appellate Tribunal,
South Zonal Bench, Chennai.



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CMA No. 1374 of 2



Order QR

**DR.ANITA SUMANTH, J.
AND
C.KUMARAPPAN, J.**

ssm

**CMA No. 1374 of 2018
AND
CMP NO. 225 OF 2022**

12.10.2026