

IN THE HIGH COURT OF ORISSA AT CUTTACK

OTAPL No.7 of 2011

The Commissioner, Central Excise, Appellant
Customs & Service Tax, Bhubaneswar

Mr. Subhash Chandra Mohanty, Senior Standing Counsel for
Revenue Department

-versus-

M/s. Sponge Udyog Pvt. Ltd., Respondent
Sundergarh

None

CORAM:
THE CHIEF JUSTICE
JUSTICE M.S. RAMAN

ORDER
02.02.2023

Order No.

03. 1. The challenge in the present appeal is to an order dated 10th December, 2010 of the Customs, Excise and Service Tax Appellate Tribunal, East Regional Bench, Kolkata (CESTAT) allowing S.T. Appeal No.170 of 2010 filed by the Assessee.
2. The issue before the CESTAT was regarding the justifiability of demand of Rs.6,54,191/- of service tax raised on the Assessee disallowing the credit availed on input service attributable to the quantity of iron ore fines and coal fines cleared by the Assessee.
3. Before the CESTAT, it was argued on behalf of the Assessee that there was no provision in the Finance Act for recovery of service tax involved on GTA Services utilized for bringing the inputs at the time of clearing. Reliance had been placed *inter alia* on three decisions of the CESTAT itself, one of them being *Chitrakoot Steel*

& Power Pvt. Ltd. v. Commissioner of Central Excise, Chennai 2008 (10) STR 118 (Tri-Chennai).

4. Those decisions of the CESTAT did hold that since there was no specific provision for reversing the credit involved on input services utilized for bringing in the inputs, no service tax liability can be enforced.

5. On the previous hearing, this Court had inquired from learned Senior Standing Counsel for the Appellant-Department whether the Department had challenged the order of the CESTAT in *Chittrakoot Steel & Power Pvt. Ltd. (supra)*. By the order dated 1st December, 2022 this Court had granted two months' time to the Department to ascertain the above fact.

6. Today, learned Senior Standing Counsel for the Department states that he is still unable to ascertain the fact.

7. Considering that this is an appeal of 2011, the Court does not consider it appropriate to grant any further time for this purpose. The Court will proceed on the basis that the Department has accepted the decision of the CESTAT in *Chittrakoot Steel & Power Pvt. Ltd. (supra)*.

8. In that view of the matter, the Court does not find any substantial question of law arising for determination in the present appeal. The appeal is accordingly dismissed.

(Dr. S. Muralidhar)
Chief Justice

(M.S. Raman)
Judge