(2021) 04 CESTAT CK 0018

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20688 Of 2019

Autokast Ltd. APPELLANT

Vs

Assistant Commissioner Of Central Tax And Central Excise, Cochin RESPONDENT

Date of Decision : 15-04-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 15(2)
Central Excise Act, 1944 — Section 11AC
Finance Act, 1994 — Section 73, 73(3), 77, 78

Citation : (2021) 04 CESTAT CK 0018

Hon'ble Judges : S.S. Garg, J

Bench : Single Bench

Advocate : Raghavendra B. Hanjer, C.V. Savitha

Final Decision : Allowed

Judgement

1. The present appeal is directed against the impugned order dated 14/02/2019 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has rejected the appeal of the appellant and upheld the penalty imposed in the Order-in-Original. Briefly the facts of the present case are that the appellant is a Kerala Government Undertaking engaged in the manufacture of G1/SG1 castings and windmill castings falling under TH No. 73259910 of CETA, 1985. Appellant has been importing raw-materials on which cenvat credit of Customs duty was paid. The records of the appellant were audited by the internal audit in 2013 and it was pointed out that the appellant had availed cenvat credit of basic Customs duty of Rs. 10,27,553/-(Rupees Ten Lakhs Twenty Seven Thousand Five Hundred and Fifty Three only) paid on imported inputs for which no cenvat credit is eligible. On the mistake being pointed out by the audit, the appellant paid the ineligible credit of Rs. 10,27,553/- (Rupees Ten Lakhs Twenty Seven Thousand Five Hundred and Fifty Three only) along with interest of Rs. 3,65,241/- (Rupees Three Lakhs Sixty Five Thousand Two Hundred and Forty One only). Thereafter, a show-cause notice dated 14/09/2015 was issued to the appellant proposing to

demand the ineligible cenvat credit along with interest and also proposing to impose penalty under Rule 15(2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. After following the due process, the original authority in the Order-in-Original confirmed the demand and appropriated the amount of duty and interest paid by the appellant before the issuance of show-cause notice and also imposed penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals) who rejected the appeal. Hence, the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law and the binding judicial decisions on the issue involved. He further submitted that the appellant had inadvertently taken the cenvat credit wrongly and when it was pointed out by the audit, the appellant immediately reversed the said ineligible credit along with interest and the same has been appropriated in the Order-in-Original. He further submitted that the appellant is a State Government Undertaking and is in a financial crisis and there was no intention to evade payment of duty and the cenvat credit was inadvertently taken which was reversed before the issue of show-cause notice. He further submitted that in such circumstances imposition of penalty is not warranted by law and he relied upon the following decisions in support of his submissions:

· Panasonic AVC Networks India Co. Ltd. Vs. CCE, Meerut-II -2012 (280) E.L.T. 297 (Tri.-Del.)

· Landis +Gyr Ltd. Vs. CCE, Kolkata-V - 2013 (290) E.L.T. 447 (Tri.-Kolkata)

· Indo-Nippon Chemicals Co. Ltd. Vs. CCE, Vadodara - 2009 (233) E.L.T. 141 (Tri.-Ahmd.)

· YCH Logistics (India) Pvt. Ltd. V. CCE, Cus. & ST, BangaloreI 2020 (43) G.S.T.L 518 (Tri.-Bang.)

· Pr. CCE, Bengaluru V. Vilax Industrial Fabrics - 2018-TIOL1363-HC-KAR-CX

4. On the other hand the learned AR defended the impugned order.

5. After considering the submissions of both the parties and on perusal of the material on record, I find that the appellant who is a State Government Undertaking has inadvertently availed the cenvat credit which on being pointed out by the audit reversed the same along with interest which fact is not in dispute and the Order-in-Original appropriated the amount and the interest paid by the appellant. Further, I find that it is a settled position of law that no suppression of material to evade payment of duty can be alleged against the State Government Undertaking. Further I find that this issue has been consistently considered by the Tribunal in the decisions cited supra and it has been held that once the duty is paid before the issuance of show-cause notice

along with interest, the show-cause notice need not be issued and question of imposition of penalty does not arise. Further, I find that in the case of YCH Logistics (India) Pvt. Ltd. Vs. C.C.E, CUS. & S.T, Bangalore-I (2020 (43) G.S.T.L 518 (Tri.-Bang.), the Tribunal has held as under:

"5. After considering the submissions by both the parties and perusal of the provisions of Sections 73, 77 and 78 of the Finance Act, 1994 and the various decisions relied upon by the appellant cited supra, we find that Section 73(3) is very clear as it says that if a tax is paid along with interest before the issuance of show cause notice, then in that case show cause notice shall not be issued. In the present case, we find that the contention of the appellant that they bonafidely believed that they are not liable to pay service tax but when the audit party raised the objection that they are liable to pay service tax, then they immediately paid the service tax along with interest which is admitted in the impugned order, is justified. Further except mere allegation of suppression, the Department did not bring any material to prove that there was suppression and concealment of facts to evade payment of tax. Consequently, in our considered view, the imposition of penalty under Section 77 & 78 is not justified and bad in law. Hence, we set aside the penalty imposed on the appellant by allowing the appeal of the appellant."

5.1. Further, I find that the Karnataka High Court in the case of Principal Commissioner of Central Excise Vs. Vilax Industrial Fabrics reported in 2018-TIOL-1363-HC-KAR-CX, wherein also the Hon'ble High Court has upheld the decision of the Tribunal dropping the penalty on the ground that when the duty is paid along with interest before the issue of show-cause notice, then no penalty is imposable.

6. By following the ratio of the said decision, I am of the view that the impugned order imposing penalty is not sustainable in law and therefore I set aside the same by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced in Open Court on 12/04/2021)