(2015) 09 CESTAT CK 0002

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Cross Appeal No. 52058 Of 2014, Excise Appeal No. 58098 Of 2013

C.C.E. And S.T. Ludhiana — APPELLANT

Vs

M/s. Aarti International Ltd. — RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 15
Central Excise Act, 1944 — Section 11A, 11AC, 11A(2B)

Citation : (2015) 09 CESTAT CK 0002

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : R K Mishra, R. Santhanam

Final Decision : Dismissed

Judgement

1. Revenue is in appeal against the impugned order dated 18.03.2013 wherein, penalty imposed in the adjudication order under Rule 15 of the Cenvat

Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 on the respondent has been dropped.

2. Brief facts of the case are that the appellant is engaged in the manufacture of the Cotton Yarn falling under Chapter Heading 52 of the Central

Excise Tariff Act, 1985. During the disputed period, the appellant availed cenvat credit of service tax paid on the construction service for construction

of residential complex within the factory premises. Taking of cenvat credit was objected to by the audit wing of the Department on the ground that the

said service is not confirming to the definition of input service. Pursuant to the audit objection, the appellant had reversed the cenvat credit and also

paid the interest for delayed reversal of cenvat credit and intimated the Department accordingly. Upon reversal of cenvat credit along with interest, the Central Excise Department initiated show cause proceedings, seeking reversal of wrongly availed Cenvat credit and for imposition of penalty. The

Show Cause Notice dated 01.04.2011 was adjudicated vide order dated 20.03.2012, wherein the proposals made therein were confirmed. On appeal,

the Commissioner (Appeals) has dropped the penalty imposed in the adjudication order.

3. Sh. R K Mishra, the Ld. DR appearing for the Revenue supports imposition or penalty in the adjudication order. He further submits that since

wrongly availed Cenvat credit has been reversed by the respondent, it is exposed to the penal consequences provided in the statute. To substantiate

his stand that imposition of penalty is justified under the facts and circumstances of the present case, the Ld. DR relies on the judgment of

Honâ??ble Supreme Court in the case of UOI vs Dharmendra Textiles Processors reported in 2008 (231) ELT 3 (S.C.).

3. Per contra, Sh. R. Santhanam the Ld. Advocate appearing for the respondent submits that the service tax and the interest thereon were reversed

by the Respondent prior to issuance of SCN, and as such, as per the requirement of Section 11A of the Central Excise Act, 1944, there was no

necessity for issuance of show cause notice for confirmation of cenvat demand and also for imposition of penalty.

4. Heard the Ld. Counsel for both the sides and perused the records.

5. I find that the Commissioner (Appeals) in the impugned order has specifically recorded that the cenvat amount in the instant case has been

reversed by the respondent prior to issue of Show Cause Notice. It has further been held that though credit has been taken by the Respondent, but the

same has not been utilized for clearance of the finished products. With regard to the intention of the Respondent in taking such credit, it has been

specifically recorded in the impugned order that taking of cenvat credit is not attributable to fraud, collusion, suppression etc. and thus, imposition of

penalty is not justified. I find that there was no necessity for issuance of SCN in view of the fact that the entire cenvat credit in dispute had been

reversed by the Respondent prior to initiation of the recovery proceedings by the Department. In this regard, Section 11A(2B) of the Central Excise

Act, 1944 mandated that when the duty has been paid on the basis of assessee's own ascertainment, no SCN should be issued and for all statistical and practical purposes, the proceedings have to be closed. In view of the said statutory provisions, since the duty has been paid by the Respondent

before issue of SCN, imposition of penalty in the adjudication order is not in confirmity with the statutory provisions.

6. The judgment cited by the Ld. DR for the Revenue is distinguishable from the facts of the present case inasmuch as there is no element of mensrea

on the part of the Respondent herein in defrauding the Government Revenue.

7. Therefore, I am of the view that there is no infirmity in the impugned order passed by the Commissioner (Appeals) in dropping the penalty imposed

in the adjudication order. Accordingly, the appeal filed by Revenue is dismissed.

(Dictated and pronounced in open court)

