(2014) 06 GUJ CK 0044

In the Gujarat High Court

Case No : Tax Appeal No. 367 of 2014 and Civil Application No. 240 of 2014

Cema Electric Lighting Products India (P.) Ltd. APPELLANT

Vs

Commissioner of Central Excise RESPONDENT

Date of Decision : 19-06-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11, 11A, 11AC

Citation : (2014) 47 GST 189 : (2015) 32 GSTR 255 : (2015) 37 STR 718 : (2015) 81 VST 275

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Harshad K. Patel, Advocate for the Appellant; Amee Yajnik, Advocate for the Respondent

Judgement

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Mukesh R. Shah, J.—Feeling aggrieved by and dissatisfied with the impugned judgment and order dated 9.4.2013 passed by the learned Customs Excise & Service Tax Appellate Tribunal, Ahmedabad in Appeal No. E/412 of 2012, by which, the learned Tribunal has dismissed the appeal preferred by the present appellant herein and confirmed the order passed by the Commissioner (Appeals) passed in Order in Appeal No. 58/2012, confirming the demand raised by the adjudicating authority to recover the amount of Rs. 1,59,353/- on the Cenvat Credit wrongly availed by the appellant, the appellant has preferred the present Tax Appeal. That the appellant herein is engaged in the manufacture of ''Fluorescent Tube Lights'', General Lighting lamp, etc. and had availed Cenvat Credit on the entire payment made to the canteen contractor even though they recovered an amount of Rs. 13,27,415/- from the employees/beneficiaries during the period from June, 2007 to June, 2009. The show-cause notice came to be issued by the Assistant Commissioner of Central Excise and Service Tax, Nadiad, to the appellant, demanding an amount of Rs. 1,59,353/- under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to sub-section (1) of Section 11A of the Central Excise Act, 1944 by invoking the extended period of limitation. The interest was also demanded under Rule 14 of the aforesaid Rules 2004 read with section 11AB of the Central Excise Act, 1944. The said show-cause notice came to be confirmed by the first adjudicating authority confirming the demand of Rs. 1,59,353/- and the penalty of the like amount under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944 also came to be imposed. By the Order in Original, the appellant was directed to pay the interest at the applicable rate under Rule 14 of the Rules, 2004 read with section 11AB of the Central Excise Act, 1944.

2. Feeling aggrieved and dissatisfied with the Order in Original passed by the Assistant Commissioner confirming the demand of Rs. 1,59,353/- and imposition of penalty of like amount and the interest thereon, the appellant has preferred an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) dismissed the said appeal confirming the Order in Original.

3. Feeling aggrieved and dissatisfied with both the orders, more particularly, the order passed by the Commissioner (Appeals), the present appellant has preferred further appeal before the learned Tribunal and by the impugned judgment and order, the Tribunal has dismissed the said appeal.

4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the Customs Excise & Service Tax Appellate Tribunal, West Zone Bench, Ahmedabad, the appellant has preferred the present appeal with the following proposed questions of law:

1. Whether the Cenvat Credit proportionate to the amount recovered from the employees/workers of the appellant is required to be disallowed to the appellant or not?

2. Whether the limitation under sec. 11A of the Central Excise Act will be applicable when the credit improperly taken has been noticed during the course of second audit?

3. Whether an amount of Rs. 1,59,353/- being the cenvat credit should not be recovered under Rule 14 of the Cenvat Credit Rules, 2004 read with the proviso to section 11A of Central Excise Act, 1944 for the period covering June 2007 to June 2009?

4. Whether the interest under Rule 14 of the Central Credit Rules 2004 read with Sec. 11AB of the Central Excise Act, 1944 should not be recovered?

5. Whether the penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Sec. 11AB of the Central Excise Act, 1944 should not be imposed on appellant?

6. Whether outdoor catering is input service and the appellant is entitled to avail the input service tax credit?

7. Whether the appellant has not recovered any service tax portion from the employees?

8. Whether the learned Tribunal has committed error in not considering the issue that show cause notice is time barred?

9. Whether the learned Tribunal has committed error in not appreciating that no penalty can be imposed in view of bona fide belief on the part of the appellant?

5. Mr. H.K. Patel learned advocate appearing on behalf of the appellant has vehemently submitted that the learned Tribunal has not properly appreciated and/ or considered the decision of the Karnataka High Court in the case of Commissioner of Central Excise Bangalore I Commissionerate, C.R. Building, Queen''s Road, Bangalore - 560 001 Vs. M/S. MTR Foods Limited., and other decisions relied upon by the appellant. It is submitted that as such on the input for out door catering service, the appellant was entitled to the Cenvat Credit, and therefore, the same was rightly availed. It is submitted that as such, the learned Tribunal has wrongly considered the services provided by the appellant as out door catering service. It is submitted that the learned Tribunal has not properly appreciated and considered the fact that as such the canteen was being run for the benefit of its employees which was mandatory under the Factories Act.

6. It is further submitted that as such the appellant has already now paid and reversed Cenvat Credit as per the impugned order, and therefore, now the question would be with respect to the interest and penalty imposed by the Assessing Officer. It is submitted that even the learned Tribunal has not properly appreciated and considered the submissions with respect to the limitation as admittedly the show-cause notice was issued beyond the period of one year. By making the above submissions, it is requested to admit and allow the present appeal.

7. The present appeal is opposed by Ms. Amee Yajnik learned advocate appearing on behalf of the respondent. It is submitted that as such there are concurrent findings of fact arrived at by all the authorities below holding that the demand confirmed has only with respect to that amount which has recovered from the beneficiaries/employees of the appellant. It is submitted that, therefore, the appellant had wrongly availed the Cenvat Credit, and therefore, the same is rightly reversed and the show-cause notice is rightly confirmed. It is submitted that even on the aspect of limitation, it has been found that there was suppression on the part of the appellant in not providing full particulars with respect to the amount collected from the employees, and therefore, the authority had rightly exercised the powers by invoking the extended period of limitation. As such, all the decisions relied upon by the appellant has been dealt with and considered by the learned Tribunal in detail, and the present appeal requires to be dismissed.

8. Heard the learned advocates appearing for the respective parties.

9. At the out-set, it is required to be noted that it has been found that the appellant was recovering the amount from the beneficiaries/its own employees while running the canteen. Therefore, as such, the appellant was not entitled to

Cenvat Credit which was claimed by them on the amount of Rs. 13,27,415/-. Therefore, under the circumstances, when the show-cause notice was issued to reverse the same and accordingly after giving opportunity to the appellant and when it was found that, in fact, an amount of Rs. 13,27,415/- was recovered by the contractor and the same was recovered by the appellant from its employees/ beneficiaries, the appellant was not entitled to the Cenvat Credit of the same, no error has been committed in confirming the show-cause notice and making the demand of Rs. 1,59,353/- towards the Cenvat Credit wrongly availed by the appellant. We see no reason to interfere with the impugned judgment and order passed by the learned Tribunal.

10. Now, so far as contention on behalf of the appellant that the show-cause notice was issued beyond the period of limitation as provided under sec. 11 of the Act is concerned, it is required to be noted that there are concurrent finding of fact by both the authorities below that the appellant had not furnished the full details and that they have recovered the amount from the beneficiaries/ employees, and therefore, the extended period of limitation has been invoked. It cannot be said that all the authorities have committed any error.

11. So far as the last contention on behalf of the appellant that now the question only with respect to interest and penalty is concerned, it is required to be noted that the aforesaid would be a consequential under the relevant provisions of the Act and Cenvat Rules. We see no reason to interfere with the impugned judgment and order passed by the learned Tribunal, and the present appeal deserves to be dismissed and it is dismissed. In view of dismissal of the Tax Appeal No. 367/2014, O.J.C.A. No. 240/2014 stands disposed of accordingly.