(2010) 04 GUJ CK 0047

In the Gujarat High Court

Case No : Tax Appeal No. 24 of 2009

Commissioner Central Excise and Customs — APPELLANT

Vs

Manaksia Limited and Others — RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:
CENVAT (Credit) Rules, 2002 — Rule 7, 7(1), 9(3)

Citation : (2010) 179 ECR 148

Hon'ble Judges : Harsha Devani, J;D.A. Mehta, J

Bench : Division Bench

Advocate : Sejal K. Mandavia, for the Appellant; Paresh V. Sheth, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Devani, J.—The appellant-revenue has challenged order dated 24.6.2008 made by the Customs, Excise & Service Tax Appellate Tribunal (the Tribunal), proposing the following question:

Whether the Hon''ble Tribunal was right in holding that credit can be allowed merely on the strength of the invoices of manufacturer if the goods are not manufactured by him?

2. The facts stated briefly are that the respondent herein placed an order with one M/s Ishan Technologies Pvt. Ltd. (hereinafter referred to as M/s Ishan) for a 10MW Slow Speed Alternator with AVRS and Voltage Control System. The respondent received the said system under invoice dated 12.4.2003 issued by M/s Ishan showing the value of the consignment as Rs. 5,50,00,000/- and the amount of duty paid as Rs. 88,00,000/-. Based upon the said invoice, the respondent availed of the benefit of CENVAT credit of the said amount.

3. Investigations by the concerned authorities revealed that the alternator had not been manufactured by M/s Ishan and accordingly, there was no clearance of the capital goods in question under the invoice issued by M/s Ishan, based on

which the credit of Rs. 88 lakhs was taken. Accordingly, the goods were confiscated and redemption was allowed on payment of fine of Rs. 2 crores. The credit of Rs. 88 lakhs came to be disallowed and interest as well as penalty also came to be imposed on the respondent and others.

4. The respondent carried the matter in appeal before the Tribunal and succeeded.

5. Ms. S.K. Mandavia, learned Standing Counsel for the appellant-revenue has invited attention to the Order-in-Original and more particularly to paragraph 1.16 thereof, to point out that the Speed Alternator which the respondent was shown to have received from M/s Ishan was actually not received from M/s Ishan but was received from somewhere else. It is, submitted that M/s Ishan not having manufactured the alternator in question, was not competent to issue the invoice in question and as such the respondent was not entitled to avail of CENVAT credit on the basis of invoice issued by M/s Ishan.

6. A perusal of the impugned order of the Tribunal, shows that the Tribunal has, upon appreciation of the evidence on record, recorded that there is no dispute that the duty on the capital goods in question i.e. Speed Alternator with AVRS and Voltage Control System stood paid by M/s Ishan Technologies Pvt. Ltd. under the cover of a central excise invoice. There is also no dispute as regards the fact that the respondent had received the alternator in question. The Tribunal placed reliance upon Rules 7 and 9(3) of the CENVAT Credit Rules, 2002 (the Rules) and observed that in view of the said provisions, it is the duty of the input receiver to take all reasonable steps to ensure that the duty of excise on capital goods in respect of which CENVAT credit is being availed of, has been paid by the manufacturer of such goods. That the manner in which such satisfaction has to be arrived stands explained in the explanation, which is to the effect that the manufacturer taking CENVAT credit shall take all reasonable steps to ensure that the appropriate duty of excise, as indicated in the documents accompanying the goods has been paid. The Tribunal has, as a matter of fact, found that the invoice accompanying the alternator in question showed payment of duty. That it was not revenue''s case that such duty was not paid by M/s Ishan. Not only that, but the respondent had also made available relevant documents like copy of accounts maintained in the books of account of M/s Ishan, relevant papers of bank statement of M/s Ishan and return filed by them with the department which unambiguously established that M/s Ishan had received the consideration of the goods supplied to the respondent and had paid duty on the goods under consideration. Thus, the Tribunal has found that the provisions of Rule 7 of the Rules stood satisfied.

7. The Tribunal has further observed that the issue whether M/s Ishan was eligible for the benefit in respect of the said goods by way of return of excise duty on the ground of the same having been manufactured in the specified area was not an issue before it. That if at all the revenue was of the view that the goods had not been manufactured by M/s Ishan in the specified area and that M/

s Ishan is not entitled to refund of the duty paid by it, the revenue can always refuse the same at the time of considering the claim of M/s Ishan for refund of the duty. Placing reliance upon a decision of this Court in the case of Commissioner of Central Excise v. Jyoti Ltd. 2008 (223) ELT 171 (Guj), the Tribunal was of the view that in absence of any clear cut evidence that the capital goods as indicated in the duty paying documents were not received by the respondent; the ratio of the decision laid down by this Court in said decision covers the issue in favour of the respondent.

8. Sub-rule (1) of Rule 7 of the CENVAT Credit Rules, 2002, insofar as the same is relevant for the present purpose, provides that the CENVAT credit shall be taken by the manufacturer on the basis of any of the following documents, namely, an invoice issued by a manufacturer for clearance of capital goods from his factory or his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacture in terms of the provisions of Central Excise Rules, 2002. In the facts of the present case, the Tribunal has found that it is an undisputed position that the respondent Company had received the alternator which was consigned; that no evidence had been produced that the supplier had not paid the duty; that receipt of goods was also not disputed. According to the Tribunal, as long as the amount of duty as indicated in the duty paying document had been paid and as long as the inputs/capital goods which are indicated in the duty paying documents are received by the assessee, the CENVAT credit cannot be denied. Besides, it is not even the Department''s case that the assessee has not received the goods accompanied by duty paid documents or that the respondent assessee has availed of higher credit than the duty actually paid, as reflected by the duty paying documents. In the circumstances, the Tribunal has rightly held that even if the alternator may have been manufactured at Delhi as contended by the revenue, as long as the duty liability of such alternator had been discharged by the supplier, entitlement of the respondent company to avail of CENVAT credit in respect of the duty paid on the capital goods in question cannot be disputed.

9. Considering the conclusions arrived at by the Tribunal on the basis of the findings of fact recorded by it, upon appreciation of evidence on record, it cannot be stated that there is any legal infirmity in the impugned order of the Tribunal so as to warrant interference.

10. In absence of any question of law, much less a substantial question of law, the appeal is dismissed.