(2015) 07 MAD CK 0095

In the Madras High Court

Case No : C.M.A. Nos. 3111-3112 of 2008

Commissioner of C. Ex. & S.T. — APPELLANT

Vs

MRF — RESPONDENT

Date of Decision : 31-07-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 11A

Citation : (2015) 52 GST 718 : (2015) 40 STR 211

Hon'ble Judges : R. Sudhakar and K.B.K. Vasuki, JJ.

Bench : Division Bench

Advocate : A.P. Srinivas, Standing Counsel, for the Appellant; Raju K. Lukose, for the Respondent

Judgement

K.B.K. Vasuki, J.—Aggrieved by the order passed by the Tribunal allowing the assessee''s appeal, the Department has filed the present appeals raising the following substantial question of law:

"Whether the 2nd respondent was correct in holding that the 1st respondent was entitled to avail credit of service tax on the basis of TR-6 Challans prior to 16-6-2005 as TR-6 challans was included as a specified document vide Notification No. 28/2005-C.E. (N.T.) , dated 7-6-2005 with effect from 16-6-2005?"

The assessee is engaged in the manufacture of Motor vehicles falling under sub-heading No. 870290.99 of the Schedule to the Central Excise Tariff Act, 1985 and are availing facilities of Cenvat Credit of duty paid on inputs, capital goods and on the input services under Rule 3 of Cenvat Credit Rules, 2004. The assessee, during the period from January, 2005 to 15th June 2005 have availed inadmissible service tax credit of (1) Rs. 1,35,152/- and Education Cess Rs. 2,649/-, (2) Rs. 4,04,001/- and Education Cess Rs. 8,021/- respectively on Goods Transport Agency Services paid for discharging the duty prior to issue of Notification No. 28/2005-C.E. , dated 7-6-2005, which is recoverable under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A along with interest under

Section 11AB of the Central Excise Act, 1944. It is alleged that although the recipient of the service has been made liable to pay service tax w.e.f. 1st January, 2005 as brought into effect vide Notification No. 35/2004-S.T., dated 3-12-2004, the assessee is eligible to take credit only from 16-6-2005 by virtue of clause (v) of sub-rule (1) of Rule 2 of Service Tax Rules, 1994, whereby the recipients of Goods Transport Agency Service are eligible to take the credit of the Service Tax paid on the basis of TR 6 challans after 16-6-2005. Therefore, alleging that the assessee contravened Rule 3 and Rule 9 of Cenvat Credit Rules, 2004 by availing inadmissible Cenvat Credit on Goods Transport Agency on the documents other than those prescribed in Rule 9 of the Cenvat Credit Rules, 2004, a Show Cause Notice was issued.

2. The adjudicating authority, vide his order dated 30-11-2006, held that the assessee is not entitled to Cenvat Credit of Rs. 1,35,152/- and Education Cess to Rs. 2,649/- availed on the TR 6 challans issued during the period 1-1-2005 to 15-6-2005 and the said amount is liable to be recovered from the assessee along with interest from the date of availing of Credit till the date of its payment and also imposed a penalty of Rs. 10,000/- on the assessee. On appeal filed by the assessee, the Commissioner (Appeals) upheld the order-in-original and rejected the appeals. The assessee persuaded the matter before the Tribunal, which, by its order dated 28-2-2008 allowed the appeals and hence, the present appeals by the Department.

3. Heard the learned counsel on either side and perused the materials made available on record.

4. The core issue involved in these appeals is whether the assessee was entitled to avail credit of service tax on the basis of TR-6 challans prior to 16-6-2005 as TR-6 challan was included as a specified document vide Notification No. 28/2005-C.E. (N.T.) , dated 7-6-2005 with effect from 16-6-2005.

5. The aforesaid issue involved in these appeals, is no more res integra in view of the decision rendered by the Tribunal in the case of Commissioner of Central Excise, Goa, v. Essel Pro-pack Ltd. reported in , 2007 (8) S.T.R. 609 (Tri-Mumbai) wherein it was held as under:

"2. Being aggrieved with the order passed by the Commissioner (Appeals) Revenue has filed the present appeal. The dispute relates in availing service tax credit in respect of service tax paid on Goods Transport Agency Services. There is no dispute on the legal issue that the Respondents are entitled to take the said credit. However, Revenues objection was that the same has been availed on the basis of TR-6 Challan, which was not a prescribed document at the relevant time and was introduced in the list of specified documents only with effect from 16-6-2005 by Notification No. 28/2005-C.E. (N.T.) , dated 7-6-2005.

3. The Commissioner (Appeals) vide his impugned order has held the said documents to be proper for the purpose of availing credit by observing as under:--

"TR-6 challan is the most primary document evidencing payment of duty/tax. No doubt the TR-6 challan was not included in the list of specified documents. It was included by virtue of Notification No. 28/2005-C.E. (N.T.) , dated 7-6-2005. I find that this is an inadvertent commission, which was rectified by issuing the said Notification. This is so because any duty payment documents is related to, and based on TR-6 challan which is the source document. Similar view has been taken up by the Hon''ble Tribunal in the case of National Organic Chemical India Ltd. reported in 2004 (178) E.L.T. 331 (Tribunal). The appellant''s case is squarely covered by this judgment. I, therefore, hold that disallowance of Cenvat credit is not correct. Consequently, interest and penalty also do not sustain. Order-in-Original is liable to be set aside."

4. Revenue in the Memo of appeal has again reiterated the same stand. Shri Prakash Shah, learned Advocate appearing for the Respondents submit that during the relevant time there was no list of specified documents on the basis of which credit could be taken. I have also heard Shri. C.S. Biradar and Shri. S.R. Savant appearing for other appellants. As such, the Appellate authority was right in holding TR-6 challan as the basis for availing service tax credit.

5. I agree with the reason adopted by the Commissioner (Appeals). The Revenue in their appeal has nowhere contended as to what the specified document for availing credit during the relevant time. If no document was mentioned, TR-6 challan has to be considered as the proper document reflecting payment of duties. Further, it is also not the Revenue''s case that the service tax was not paid by the Respondents or they were otherwise not entitled to the credit of the same."

6. The above said decision of the Tribunal was affirmed by a Division Bench of the Bombay High Court in Commissioner of Central Excise Vs. Essel Propack Ltd. , wherein it was held as under:

"7. On going through the CENVAT Credit Rules, 2004, we find that they do not prescribe any documents for availing of service tax credit during the disputed period in respect of the service tax paid on goods transport agency services. The appellant, in the present case, has nowhere contended which were the specified document for availing of such credit during the relevant time. If no documents have been mentioned, TR 6 challan has to be considered as a proper document, reflecting payment of such tax. Further, it is also not the case of the appellant that service tax was not paid by the respondents or that they were otherwise not entitled to such credit.

8. The Punjab & Haryana High Court, in the case of Commissioner of Central Excise Vs. Ralson India Ltd., held that if the duty paid has the character of inputs and their receipt in manufacturer''s factory and utilization in manufacture of final product is not disputed, then the credit cannot be denied to such person. It is also to be noted that the Department''s Circular dated 19th November, 2001 observes that once the duty payment is not disputed and it is found that the

documents are genuine and not fraudulent, then the manufacturer would be entitled to CENVAT credit on duty paid inputs.

9. In the present case, the authorities below have accepted that the respondents are entitled to such Cenvat Credit. The only point for consideration, in such circumstances is the type of document required to be produced to avail of such credit. The respondents have produced the TR 6 Challan which is emanated from the office of the appellants themselves to support their claim for such CENVAT Credit, which material was accepted by the authorities below whilst passing the impugned order.

10. For the aforesaid reasons, the question of discarding the said Challan to avail of such CENVAT Credit, as contended by the learned Counsel appearing for the appellant, cannot be accepted. The Authorities below, as such, have rightly accepted the said Challan as proof of payment of service tax and, as such, no infirmity can be found in the orders passed by the Authorities below. In any event, the appellants are not entitled to rely upon Rule 9 to refuse the credit to the respondents, as Rule 9 is a procedural aspect which cannot deny the claim of the respondents to avail of such CENVAT Credit which they are, otherwise, admittedly, entitled to. The substantial question of law is answered accordingly."

In view of the law enunciated in the decision cited supra, which we concur with, we hold the first respondent is entitled to avail credit of service tax on the basis of TR-6 Challan. Accordingly, the question of law raised in these two appeals is answered in favour of the assessee and against the Department. Both these Civil Miscellaneous Appeals stand disposed of. There shall be no orders as to the costs.

