(2011) 01 KAR CK 0166

In the Karnataka High Court

Case No : C.E.A. No. 3 of 2010

Commissioner of C. Ex. APPELLANT

Vs

Mangalore Refinery and Petrochemicals Ltd. RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:
Central Excise Act, 1944 — Section 11 A, 35 G, 35 L
CENVAT Credit Rules, 2004 — Rule 14, 5, 6 (2), 6 (3)

Citation : (2011) 267 ELT 190 : (2012) 25 STR 393

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : Y. Hari Prasad, for the Appellant; Chandrakumar and Associates, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This appeal by the revenue holding that proportionate reversal of CENVAT credit taken on the inputs which are utilized for the manufacture of exempted product, is enough to satisfy the provisions of Rule 6(2) and 6(3) and therefore, it upheld the order passed by the appellate authority and set aside the order passed by the assessing officer which had denied benefits to the Assessee.

2. The assessing officer in the course of assessment held that, Assessee has reversed and amount of Rs. 72,699/- being the credit of duty paid on the inputs used for manufacture of DM water which is in contravention of the CENVAT credit Rules, 2004. Therefore, he proceeded to pass an order holding that, a sum of Rs. 9,71,734/- would be 10% of the value of the same, as issued in the show cause notice for the period from March 2005 to February 2006 under Rule 14 of the CENVAT Credit Rules, 2004 r/w Rule 5 of the CENVAT Credit Rules, 2004 and Section 11A of the Central Excise Act, 1944 is due from the Assessee. As against the said demand, a sum of Rs. 72,699/- is already paid by him was appropriated and a demand was also issued for interest and a penalty of Rs. 8,99,035/- is also. It is this order which is reversed both by the 1st appellate authority and

2nd appellate authority.

3. Therefore, the question for consideration in this appeal is, when the Assessee during the course of production of steam are using such common inputs and inputs services, for manufacture of both dutiable and exempted final products, when they have not opted to maintain a separate account for receipt, consumption and inventory, on such inputs meant for use in the manufacture dutiable final products and the quantity of inputs meant for use in the manufacture of exempted product and when they have cleared the same which was manufacture with the use of CENVAT credit from M/s. HPCL on payment of duty, the Assessee has an option of paying the amount equivalent to the CENVAT credit for the use in or in relation to the manufacture of final products namely, steam. Therefore, it is a clear case of ascertaining the liability of the Assessee which falls within the term of determination of rate of duty payable by the Assessee.

4. If that is so, in view of Section 35G that, determination is outside the scope of the appeal before this Court, it is a matter to be aginated in appeal u/s 35L of the Act, before the Apex Court.

5. In that view of the matter, we decline to entertain this appeal as not maintainable, however reserving liberty to the Appellant to approach the Apex Court u/s 35L of the Act. Hence we pass the following:

ORDER

6. The appeal is rejected as not maintainable with liberty to the Appellant to approach the Apex Court u/s 35L of the Act.