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In the Madras High Court

Case No : C.M.A. No. 1662 of 2011

Commissioner of C. Ex.	APPELLANT
Vs	
Sundaram Auto Components Ltd.	RESPONDENT

Date of Decision : 27-08-2015

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11A, 35G

Citation : (2015) 325 ELT 104 : (2015) 52 GST 702

Hon'ble Judges : V. Ramasubramanian and T. Mathivanan, JJ.

Bench : Division Bench

Advocate : T. Chandrasekaran, for the Appellant; M. Karthikeyan for S. Jayakumar, for the Respondent

Judgement

V. Ramasubramanian, J.—This appeal is by the Revenue under Section 35G of the Central Excise Act, 1944. Heard Mr. T. Chandrasekaran, learned Senior Panel Counsel for the appellant and Mr. M. Karthik, learned counsel for the first respondent.

2. By a show cause notice dated 6-11-2007, the assessee was called upon to show cause as to why the excess credit allegedly claimed by them as Cenvat credit should not be reversed and interest over penalty levied. It was followed by an order-in-original dated 29-7-2008, demanding a sum of Rs. 1,91,995/- being the Cenvat credit availed by the assessee under Rule 14 of the Cenvat Credit Rules, 2004 read with proviso to Section 11A of the Central Excise Act, 1944.

3. The appeal filed by the assessee before the Commissioner (Appeals) was dismissed on 15-3-2010. However, a further appeal filed by the assessee in Appeal No. E/392/2010 was allowed by the Tribunal by order dated 1-12-2010 [, 2011 (267) E.L.T. 377 (Tribunal)]. A small mistake had crept in the said order and when it was brought to the notice of the Tribunal by way of a miscellaneous application, the Tribunal directed the amendment to be carried out by a further order dated 26-4-2011. This order did not alter the finding recorded in the original order. Therefore, aggrieved by the original order of the Tribunal

dated 1-12-2010, the Commissioner of Central Excise is on appeal.

4. The only question of law on which the Revenue has come up with the above appeal is as to whether the manufacturer is entitled to claim credit for the duty paid by the job worker or not.

5. The above issue has already been answered by the Supreme Court in International Auto Ltd. v. Commissioner [2005 (183) E.L.T. 239 (S.C.)]. A Bench of this scour has also held in Commissioner of Central Excise, Puducherry v. Kohinoor Printers Pvt. Ltd. [, 2015 (321) E.L.T. 448] that the credit of duty paid by the job worker even when he is not required to pay it, can be availed by the manufacturer. This decision of a Bench of this Court followed an earlier decision of the Supreme Court in Commissioner v. Narmada Chematur Pharmaceuticals Ltd. [2005 (179) E.L.T. 276].

6. What happened in this case was that the first respondent/assessee handed over plastic materials during the period from July, 2006 to December, 2006 to a Company by name Nypro Forbes Products Private Limited for carrying out certain job works. The goods were handed over after availing credit for inputs, but, not actually paying duty. The Company which undertook the job work, while returning the goods, after carrying out the job work, raised invoices, for amounts including the duty that they paid. Even according to the Department, the job worker was not liable to make payment of duty. But, since the duty was paid by the job worker and also claimed from the first respondent/assessee, the first respondent/assessee claimed credit. But, the Department went on a wrong presumption that credit had been claimed twice by the first respondent. As a matter of fact, the assessee did not claim credit twice over. At the time when the goods were supplied, they availed the credit. After the Company which undertook the job work, had paid the duty, even according to the Department, the job worker was not liable to pay it. Since they have paid and collected it from the assessee, what the first respondent collected was only the duty that had to be paid on account of the mistake committed by the job worker. The original authority and the appellate authority wrongly construed the same as a double benefit by applying the theory of unjust enrichment. This is what was rectified by the Tribunal. Hence, the order of the Tribunal is in accordance with law. Therefore, the question of law is answered in favour of the assessee. The appeal is dismissed. No costs.

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