(2010) 12 P&H CK 0457

In the Punjab And Haryana At Chandigarh

Case No : S.T.A. No. 41 of 2010

Commissioner of C. Ex., Ludhiana APPELLANT

Vs

Jagatjit Industries Ltd. RESPONDENT

Date of Decision : 24-12-2010

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
CENVAT (Credit) Rules, 2004 — Rule 14

Citation : (2011) 22 STR 518

Hon'ble Judges : Ajay Kumar Mittal, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This appeal has been preferred by the revenue u/s 35G of the Central Excise Act, 1944 read with Finance Act, 1994 against order dated 10-9-2009 2010 (17) S.T.R. 137 passed by the Customs Excise and Service Tax Appellate Tribunal/New Delhi (in short "the Tribunal"), proposing to claim following substantial questions of law :

(i) Whether the judgment and order passed by the Ld. CESTAT New Delhi is proper and legal?

(ii) Whether the Ld. CESTAT was right in holding that the respondent is liable to pay interest only on the Cenvat credit utilized by them and not on the entire of CENVAT Credit taken?

(iii) Whether in view of the provisions of Rule 14 of the CENVAT Credit Rules, 2004 the interest is recoverable from the respondent on wrongly availed CENVAT Credit under CENVAT Credit Rules, 2004?

2. The assessee is manufacturer of excisable goods and also provides management consultancy service exigible to service tax. It wrongly availed Cenvat Credit during the period from November, 2004 to October, 2005 in respect of service tax paid but the same was reversed in November, 2005 on the

irregularity being detected. Vide order-in-original dated 1-7-2008, demand for tax interest and penalty was raised. On appeal, the same was set aside by the Commissioner (Appeals) holding that the assessee having reversed the Cenvat Credit before utilizing the same, there was not justification for the demand. The said view, except in respect of interest on the amount of Rs. 91,000/- on which Cenvat Credit had been wrongly availed, has been upheld by the Tribunal as follows :

3.2 As regards the interest on Cenvat credit in view of Hon''ble Punjab & Haryana High Court Judgment in the case of CCE, Delhi-III v. Maruti Udyog Ltd. (supra) wherein the Hon''ble High Court has held that when inadmissible Cenvat credit was taken but not utilized and subsequently the assessee reversed the same, the assessee was not liable to pay any interest, no interest would be payable by the respondent on the amount of unutilized credit. I find that this judgment of Hon''ble Punjab & Haryana High Court has been upheld by the Hon''ble Supreme Court also in the case of Commissioner v. Maruti Udyog Ltd. (supra). However, the respondent would be liable to pay interest on the Cenvat credit of Rs. 91,000/- which had been utilized and accordingly, the Cenvat credit demand of Rs. 8,000/- is correct.

4. In view of the above discussion, while the impugned order is set aside only in respect of interest on the amount of Rs. 91,000/- and in this regard, the Assistant Commissioner''s order is restored, the rest of the impugned order is upheld. The appeal stands disposed off, as above.

3. We have heard learned counsel for the appellant.

4. From the concurrent finding recorded by the Commissioner (Appeals) and the Tribunal, it is clear that the assessee reversed the Cenvat Credit and wrongly availed the same to the extent of Rs. 91,000/- and on the Cenvat Credit which was reversed and was not availed of by the assessee, there was no question of any demand of tax or interest. No substantial question of law arises.

5. Accordingly, the appeal is dismissed.

