
(2013) 10 P&H CK 0379

In the Punjab And Haryana At Chandigarh

Case No : Central Excise Appeal No. 40 of 2012

Commissioner of Central Excise

APPELLANT

Vs

Punjab Casting P. Ltd.

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 306 ELT 612 : (2014) 25 GSTR 322

Hon'ble Judges : Rajive Bhalla, J;Bharat Bhushan Parsoon, J

Bench : Division Bench

Judgement

Dr. Bharat Bhushan Parsoon, J.—These two appeals u/s 35G of the Central Excise Act, 1944 (for short, the Act) are directed against the common order dated August 2, 2011 (annexure A-3) of the Customs, Excise and Service Tax Appellate Tribunal, New Delhi (for short, the Tribunal) whereby the order dated December 20, 2004 (annexure A-2) passed by the Commissioner (Appeals), Customs and Central Excise, was affirmed. Both these appeals have been taken up together for adjudication as the same question of law is involved therein.

2. The respondents in both these appeals are engaged in manufacture of non-alloy steel ingots. In pursuance to floating of compounded levy scheme with effect from May 14, 1997 by the Finance Act, 1997 in respect of furnace and hot steel re-roller units, the respondents opted to pay a fixed duty in terms of capacity of their induction furnaces. Sequel, each respondent was required to pay a fixed duty of Rs. 5 lakhs per month on the three metric ton capacity of its induction furnaces. The respondents debited their Cenvat credit account of inputs for discharging their liability of payment of excise duty for the period under the compounded levy scheme.

3. As per the Department, the respondents could not have made use of Cenvat credit account and the duty was to be paid only through personal ledger account (for short, PLA). Finding fault with the procedure of payment of duty, the adjudicating authority, i.e. the Joint Commissioner, Customs and Central Excise confirmed the demand of Rs. 8,04,195 against M/s. Punjab Castings Pvt. Limited

and demand of Rs. 17,71,208 against M/s. R Ess Iron and Steel Private Limited via PLA along with interest, disallowing the duty discharged through Cenvat account. In addition, penalty of an equal amount was also confirmed against them.

4. The respondents challenged this order of the adjudicating authority by way of separate appeals. Vide the order dated December 20, 2004 (annexure A-2), the appellate authority found that as arrears in question were on account of excise duty, there was no bar in paying the same through Cenvat account. The appeals of the respondents were allowed. Dissatisfied with order annexure A-2, the Department went in appeal. In its joint order, the Tribunal, vide the order dated August 2, 2011, confirmed the view taken by the Commissioner (Appeals) holding that excise duty liability on final products covered under the compounded levy scheme could be discharged through Cenvat credit. Payment of duty through Cenvat credit account thus was found to be in order. Levy of interest and imposition of penalty by the adjudicating authority was set aside.

5. The learned counsel for the appellant has been heard while going through the paper books.

6. Plea of the Department is that benefit of Cenvat credit could not be availed of by the respondents as they were required to discharge their duty liability only through PLA. It is claimed that payment of duty via Cenvat credit does not discharge duty liability of the respondents. In short, it is claimed that first as also second appellate authority went wrong in approving the action of the respondents of payment of duty through Cenvat credit. Seeking reversal of orders of the appellate authority, restoration of the order-in-original is sought.

7. When counsel for the appellant-Department, vociferously espousing the cause of the Department, has contended that strict compliance of rules was to be made by the respondents in discharging their duty liability and payment was to be made only through PLA, it has been conceded that there is neither evasion of duty nor any loss has been occasioned to the Revenue.

8. Even if whole case of the Department is considered in entirety, the only defect is in the procedure adopted by the respondents for discharging their duty liability. At this stage, the findings of the Tribunal, are reproduced as below :

On careful consideration of the submission made from both sides, we find that the case put against the assessee in the show-cause notice clearly indicates that the demand, penalty and interest on the demand is only on the ground of discharge of duty liability on the final products covered under the compounded levy scheme after April 1, 2000 through Cenvat credit account. It is seen that the learned Commissioner (Appeals) has come to conclusion that such amounts which were duty from the appellants could be discharged through debit in Cenvat credit and were accordingly debited by them on their own. Such a debit through Cenvat credit account cannot be faulted with and there is no need for imposition of penalty and interest, as Cenvat Credit Rules specifically indicate utilisation of

legit credit availed of for discharge of duty liability. There is no dispute that the credit availed of was eligible credit.

9. It is evident from these findings that both the appellate authorities had found no fault with the mode of payment of excise duty by the respondents. Cenvat account of the respondents had sufficient credit and they discharged their duty liability through the same instead of making payment through PLA; there is neither loss to the Revenue nor there is evasion of duty. Sequently, the appeals being devoid of merit are dismissed in limine.