(2014) 12 P&H CK 0079

In the Punjab And Haryana At Chandigarh

Case No : C.E.A. No. 101 of 2013

Harsaran Dass Sita Ram APPELLANT

Vs

Commissioner of C. Ex., Panchkula RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11 11A 11AC 38A

Citation : (2015) 322 ELT 686

Hon'ble Judges : Rajive Bhalla, J;B.S. Walia, J

Bench : Division Bench

Advocate : Deepak Gupta, Advocate for the Appellant; Sunish Bindlish, Advocate for the Respondent;

Judgement

Rajive Bhalla, J.

1. The appellant challenges order dated 25-3-2013, passed by the Customs, Excise & Service Tax Appellate Tribunal (hereinafter referred to as the ''CESTAT''), New Delhi, affirming order dated 27-1-2006, disallowing Cenvat credit of Rs. 1,97,263/- and an equal amount of penalty and order dated 31-8-2010, passed in first appeal filed by the appellant. A statement made by one Shri R.K. Gupta, Proprietor of M/s. R.K. Enterprises, that he had passed on Modvat/Cenvat credit without supplying goods and by only issuing invoices led to the search of his premises, recording of statements of Sarla Devi, mother of R.K. Gupta, Raj Kumar Verma, authorised signatory of the appellant, Arun Kumar, partner of M/s. Jain Tar Udyog as also recovery of forged documents and seals etc. As the respondent formed a prima facie opinion that the appellant had contravened Rule 57AB, 57AC and 57AE of the Central Excise Rules, 1944, (hereinafter referred to as the ''Rules''), the appellant was called upon vide notice dated 16-11-2004 to show cause why:-

"(a) The Cenvat credit amounting to Rs. 1,97,263/- wrongly taken and utilised should not be disallowed and be recovered from them under Rule 57AH of the erstwhile Central Excise Rules, 1944 read with Section 11 of the Central Excise

Act, 1944 by invoking the extended period of limitation as provided in proviso given under sub-section (1) of the said Section 11A;

(b) the interest as applicable should not be recovered under Rule 57AH of the Central Excise Rules, 1944 read with Section 11AB of the Central Excise Act, 1944; and

(c) the penalty should not be imposed under Rule 57AH with Rule 173Q of erstwhile Central Excise Rules, 1944 and Section 11AC further read with Section 38A of the Central Excise Act, 1944."

2. The appellant appeared before the adjudicating authority and sought cross-examination of the driver of the vehicle and Shri R.K. Gupta and produced photocopies of RG-23A allegedly to show that they had received and consumed the goods. On 17-1-2006 Premo Devi, owner of vehicle No. DL-1LD-5629 was cross-examined by counsel for the appellant. Shri R.K. Gupta could not be examined as he did not put in appearance.

3. The adjudicating authority thereafter disallowed Cenvat credit and imposed penalty of an equal amount. The appellant filed an appeal which was dismissed on 18-4-2007. The CESTAT, however, vide order dated 8-9-2009, set aside the order and remitted the matter to the Assistant Commissioner for adjudication afresh by granting an opportunity to the appellant to prove that they had received and consumed goods sold to them by Shri R.K. Gupta.

4. The Assistant Commissioner passed a fresh order dated 31-8-2010 maintaining the disallowance of Cenvat credit and imposed penalty. The appellant filed an appeal which was dismissed on 4-2-2011. The appeal filed by the appellant before the CESTAT has been dismissed.

5. Counsel for the appellant submits that the foundation of the case is the statement made by Shri R.K. Gupta who stated that GR books were printed by him and that the transport companies named in the GR books do not exist but did not state that goods were not supplied to the appellant. All that Shri R.K. Gupta stated was that where the quantity delivered was more than six tonnes, the transaction was bogus. The quantity of the goods supplied to the appellant, through invoices were 2705 kg, 2923 kg. and 4004 kg. i.e. less than six tonnes. This apart, Shri R.K. Gupta retracted his statement even though he was confined in Tihar jail. The CESTAT has wrongly held that the appellant has failed to prove receipt and use of goods in manufacture of any final product as onus to prove the case against the appellant lay upon the respondents. The finding is even otherwise factually incorrect as the appellant received and used the goods in manufacture of final products which were cleared after payment of duty. The appellant has maintained complete and correct statutory record as proved from RG-1 and RG-12. The respondent, however, has failed to verity RG-1 and RG-12 and merely relied upon the statement made by Shri R.K. Gupta which even otherwise had been retracted. Counsel for the appellant also submits that opportunity to cross-examine Shri R.K. Gupta was not granted thereby causing

serious prejudice to the appellant. The statement made by Premo Devi, that she was not aware of the transportation of the goods by R.K. Enterprises has been wrongly interpreted. Premo Devi did not state that goods received by the appellant were not transported. Counsel for the appellant relies upon the following judgments:-

1. Garima Enterprises (P) Ltd. v. Commissioner of Central Excise, Delhi-IV, 2005 (182) E.L.T. 106 (Tri.-Del.)

2. Commissioner of Central Excise, Commissionerate v. M/s. Garima Enterprises and another, CEA-122-2006, decided on 6-1-2009 [2009 (239) E.L.T. 254 (P & H)];

3. Commissioner of C. Ex. Vs. Rajdoot Cables (P) Ltd., ;

4. Lakshmi Wire v. Commissioner of Central Excise, Delhi-IV, 2006 (193) E.L.T. 511 (Tri.-Del.) ;

5. Commissioner of C. Ex. Vs. Laxmi Engineering Works, ; and

6. Mahek Glazes Pvt. Ltd. Vs. Union of India, .

6. Counsel for the Revenue submits that a perusal of order, dated 8-9-2009, passed by the CESTAT remitting the matter to the adjudicating authority reveals that the CESTAT has recorded a finding that GR receipts are bogus and have been fabricated but after referring to a judgment of the CESTAT in Rajiv Alloys Limited, remitted the matter to the appellate authority to enable the appellant to prove that under the invoices in dispute, goods were actually received and consumed by the appellant. As is apparent from the impugned orders, the appellant failed to discharge this onus and, therefore, neither judgments relied by the appellant nor arguments addressed can come to his aid.

7. We have heard counsel for the parties and perused the impugned orders.

8. The respondent, unearthed a fraudulent availing of Modvat/Cenvat credit based upon fraudulent GR receipts and other documents issued by Shri R.K. Gupta, Proprietor of R.K. Enterprises. The respondent recovered fraudulent stamps, documents, GR receipts, books and other material from the premises of Shri R.K. Gupta, who thereafter made a statement admitting to the bogus transactions. It would also be appropriate to point out that Shri R.K. Gupta did not possess any manufacturing facility or any godown from where he could supply goods. The appellant has admittedly availed Cenvat credit on goods received from Shri R.K. Gupta. In the first round of litigation, orders passed by the adjudicating authority were set aside by remitting the matter to the adjudicating authority to grant an opportunity to the appellant to prove the correctness of these transactions. A relevant extract from this order reads as follows:-

"I have carefully considered the submissions from both the sides and perused the record. In this case there is no dispute about the fact that the GRs under which the goods had been dispatched by the registered dealer - M/s. R.S. Enterprises are bogus and had been fabricated by him. In fact, the owner of one of the trucks which was used for transportation of the goods covered under invoice No. 241 & 256 in her statement has clearly stated that she is not aware of the transportation of any goods of M/s. R.K. Enterprises. In view of these circumstances, following the judgment of this Tribunal in the case of Rajiv Alloys Ltd. (supra), I hold that the burden of proving that under these invoices the goods had actually been received would be on the appellant. Since the ratio of this judgment has not been considered by the lower Appellate Authority and by the Adjudicating Authority, the impugned order is set aside and the matter is remanded to the Assistant Commissioner for de novo adjudication of this matter in accordance with the law laid down by this Tribunal in the case of Rajiv Alloys Ltd. (supra)."

9. After remand, the appellant was unable to prove the genuineness of the transactions or the fact that the appellant actually received and consumed the goods by manufacturing other products or using them for other products. The appellant having accepted the earlier order passed by the CESTAT placing onus upon the appellant, to prove genuineness of the transactions, cannot rely upon judgments referred to above, which are based upon the fact that the prosecution was unable to prove its case against the assessee. The mere fact that the appellants in these judgments were given benefit of the statement made by Shri R.K. Gupta that goods below six tonnes were genuine transactions did not absolve the appellant, in view of the onus placed by the CESTAT, in the earlier round of litigation from proving genuineness of the transactions. A relevant extract from the order passed by the CESTAT reads as follows:-

"5. After hearing both sides I find that the case was remanded by this Tribunal vide order dated 8-9-2009. In para 7 of the order, Tribunal has observed that "there is no dispute about the fact that GRs under which the goods had been dispatched by the registered dealer M/s. R.K. Enterprises are bogus and had been fabricated by him. In fact, the owner of one of the truck which was used for transportation of the goods covered under invoice Nos. 241 & 258 in her statement has clearly stated that she is not aware of the transportation of any goods of M/s. R.K. Enterprises." I also find that appellant has not challenged this order of the Tribunal. Commissioner (Appeals) has held that burden of proof that goods were received and used for manufacture of final product lies on the appellant and same has not been discharged by them. In view of the fact that the order of the Tribunal was not challenged and also the fact that appellant did not prove receipt and use of the goods in the manufacture of final products, there is no infirmity in the order passed by the Commissioner (Appeal). Accordingly I uphold the order in appeal and reject the appeal of the appellant."

The appellant having failed to prove to the satisfaction of the authorities receipt and consumption of goods received from Shri R.K. Gupta, we have no hesitation in holding that no question of law much less the question of law framed by the appellant arises for adjudication. As a consequence, the appeal is dismissed.