(2021) 12 CESTAT CK 0035

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 53692 Of 2018

Hetram Sharma APPELLANT

Vs

Commissioner Of Central Goods And Service Tax And Central Excise RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 9

Citation : (2021) 12 CESTAT CK 0035

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellant is absent on call and have been absent on the previous occasions. On the last date also, the matter was adjourned by way of last

chance. Today also, nobody appears when the matter was called. Accordingly, the appeal was heard with the assistance of learned Authorised

Representative for the Revenue and on perusal of record.

2. The appellant is a service provider under the head â??Cargo Handling Serviceâ?? being output service. The appellant availed cenvat credit of

service tax paid on input service and also on capital goods.

3. In the course of audit for the period 2010-11 to 2014-15, upto October, 2014, it appeared to Revenue that appellant has taken cenvat credit in

respect of capital goods during the period 2011-12 and 2012-13 on the basis of cenvatable documents i.e. invoices, and a separate chart mentioning

therein invoice No. and date, name of supplier of vehicle Hyva - Loader. Further, admitted fact is that the invoices of the seller of the goods or

vehicles namely M/s Shivam Motors contained various details like basic excise duty, additional excise duty, automobile cess, education cess &

S&HEC on the motor vehicle, falling under CETH 87060042 as capital goods. The appellant have purchased total twelve numbers of vehicle vide total

twelve different invoices from M/s Shivam Motors Pvt. Limited. The total cenvat credit i.e. basic and additional duty amounted to Rs.23,36,042/-, on

the twelve invoices. The appellant could not produce three invoices as listed in Sl. No. 1, 2 and 3 in para 2.1 of the show cause notice. It is further

observed that the invoices do not contain ECC code and no particulars of Central Excise on the goods. The invoices also do not mention the name of

original manufacturer. In this regard, the appellant produced before the audit, copies of invoices issued by the manufacturer of the vehicle â?" Tata

Motors Limited. On verification of the invoices, it revealed that originally the vehicles were cleared by M/s Tata Motors Limited to other parties

namely; Hyva (I) Pvt. Ltd.,/M/s Utkal Automobile Ltd.,/ M/s Commercial Engineers & Body Builders and ABU RSO â?" M/s Tata Motors Ltd.,

Raipur, by mentioning them as â??Internal Customerâ??.

4. It further appeared to Revenue that cenvat credit on the vehicles or capital goods availed, has neither been received from the manufacturer nor

from the registered dealer. As the manufacturerâ??s invoices issued against clearance of the said goods from the factory, did not show the name of

the appellant as consignee. Thus, it appeared that the documents are not proper in terms of Rule 9 of Cenvat Credit Rules. The show cause notice

dated 15.05.2016 proposed to disallow the cenvat credit of Rs. 23,36,042/- and further proposal to impose penalty. The show cause notice was

adjudicated on contest and the proposed demand was confirmed with equal amount of penalty as well as interest.

5. In the appeal before the Commissioner (Appeals), he pleased to observe that the appellant has availed cenvat credit passed on the tax invoices

issued by M/s Shivam Motors, the registered dealer of M/s Tata Motors Limited, alongwith respective excise challan cum sales invoice issued by the

manufacturer to their specific counterpart. The Commissioner observed that the appellant has availed cenvat credit on the strength of 12 nos. of

commercial/ tax invoices issued by M/s Shivam Motors. However, the said invoices do not contain any vital information like ECC No., rate & amount

of Central Excise duty and name of vehicle. Thus, the Adjudicating Authority has rightly held that Central Excise duty paid on the vehicle received by

the appellant, could not be co-related with the invoice of the manufacturer, as the documents issued by the manufacturer are not in the name of the

appellant-assessee. However, the Commissioner (Appeals) reduced the penalty to 50%. Being aggrieved, the appellant is before this Tribunal.

6. Upon perusal of record and the grounds of appeal, I find that admittedly M/s Shivam Motors is a Authorised dealer of M/s Tata Motors Limited and

thus a representative of the manufacturer of the motor vehicle. Admittedly, the appellant have produced the invoices of the dealer alongwith invoice-

cum-challan issued by M/s Tata Motors Limited, when they initially cleared the goods to their specific counterpart mentioning on the invoice â?

â??internal customerâ??. I further find that the details of excise duty and cess as per the invoice of M/s Shivam Motors is not in dispute, as have

been taken notice of in para 2.1 of the show cause notice and also in para 2.2 of the order-in-original. Thus, I find that there is an error on the part of

Revenue in appreciating the documents, where a provider of service has received the capital goods manufactured by M/s Tata Motors Limited

through its authorised dealer. Accordingly, I find that the show cause notice is mis-conceived and no case of wrong cenvat credit taken as alleged, is

made.

7. In view of my finding, I set aside the impugned order and allow the appeal with consequential benefits, in accordance with law.

(Dictated and pronounced in open Court).