(2020) 12 CESTAT CK 0052

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 77095 Of 2019

M/s BST Infratech Ltd. @Hash Commr. Of CGST And Excise, Bolpur

Date of Decision : 21-12-2020

Acts Referred:
Central Excise Tariff Act, 1985 — Chapter 72, 73
Cenvat Credit Rules, 2004 — Rule 9, 14, 14(1)(ii), 15, 15(2)
Central Excise Act, 1944 — Section 11A, 11A(4), 11AA, 11AC, 11A(10), 11AC(1)(c)

Citation : (2020) 12 CESTAT CK 0052

Hon'ble Judges : P. K. Choudhary, J;P. Anjani kumar, Technical Member

Bench : Division Bench

Advocate : Sudhir Malhotra, T.Mondal

Final Decision : Allowed

Judgement

,,,,

1. The present appeal is directed against Order-In-Original No. 02/Commr/BOL/19-20 dated 28.05.2019 issued under C.No. V(15)54/Adj/ASN-,,,,

II/CGST/Bol/18/293 dated 07.06.2019 and passed by the Commissioner, CGST Commissionerate Bolpur, Sian, Bolpur, Distt. Birbhum (WB)-7312014.",,,,

2. Briefly stated the facts of the case are that M/s BST Infratech Limited (Formerly Known as M/s Baba Strip & Tubes Ltd.), Jamuria Industrial",,,,

Area, Jamuria, Mondalpur, Distt. Burdwan, West Bengal (hereinafter referred to as the appellant) were engaged in the manufacture of different items",,,,

of Iron & Steel classifiable under Chapter 72 & 73 of Central Excise Tariff Act, 1985 (hereinafter referred to as impugned goods). They are holding",,,,

Central Excise Registration and availing CENVAT Credit in respect of inputs used in the manufacture of impugned goods.,,,,

3. A show cause cum demand notice No. 12/Commr/BST/DGP Audit/ 2018 dt. 07.05.2018 was issued to the appellant under CNo. V(15)275-,,,,

SCN/BST/Tech/DGP Audit/ Part-1/2018/4696 dt. 08.05.2018 (Annexure â??Aâ??) wherein it was alleged that:-,,,,

i) An audit was conducted from 28.04.2015 to 01.05.2015 for the period 2013-14 by the department at appellantâ??s factory premises. On scrutiny,,,,

of documents it was observed that a difference appeared in purchase value of raw material in balance sheet as compared to ER-1 returns thereby,,,,

resulting in excess availment of CENVAT Credit on inputs. In the audited balance sheet of the appellant for the financial year 2013-14, the purchase",,,,

amount of material consumed has been shown as Rs.260,32,34,295/-, whereas the price of raw material consumed by the appellant, calculated from",,,,

the total CENVAT Credit availed by them as shown in their ER-1 returns for the financial year 2013-14 comes to Rs.278,92,71,570/- by using the",,,,

following formula :-,,,,

Price of raw material = Total CENVAT Credit availed on inputs as per ER-1 x 100 / 12.36,,,,

ii) It was alleged that the appellant had shown escalated value of raw material in their ER-1 returns submitted to the department during the year 2013-,,,,

14 and accordingly availed excess CENVAT Credit which is irregular and inadmissible. It was alleged that the appellant had suppressed the material,,,,

facts from the department and that the appellant actually did not purchase the raw material relating to the differential amount and did only paper,,,,

transaction to wrongly avail CENVAT Credit to the tune of Rs.2,29,94,207/- (including Cesses) during the year 2013-14 and utilized the same for",,,,

payment of central excise duty..,,,,

iii) It was alleged that during the year 2012-13, there was difference in purchase value of Rs.6,36,16,543/- of raw material as determined on the basis",,,,

of balance sheet for the year 2012-13 and thus the appellant availed excess CENVAT Credit amount of Rs.78,63,005/- It has been alleged that as",,,,

Form 3CD for the year 2012-13 is to be submitted on or before October 2013 and the demand for the financial year 2012-13 is based on the date of,,,,

submission of balance sheet for the year 2012-13, the demand for the year 2012-13 is well within the time limit of extended period of limitation.",,,,

iv) Similar analogy has been applied in the succeeding years of 2014-15 to 2016-17 and the appellant appeared to have availed irregular/ inadmissible,,,,

CENVAT Credit of Rs.42,96,219/-, Rs.29,11,688/- & Rs.1,14,29,519/-

respectively. It has been alleged that appellant willfully and deliberately availed",,,,

and utilized CENVAT Credit without receipt of raw material or by short receipt of raw material. The appellant had deliberately and willfully availed,,,,

inadmissible CENVAT Credit total amounting to Rs.4,94,94,638/- during the period from 2012-13 to 2016-17 on the raw material which was not",,,,

received in their factory premises and never used for manufacture of their final products.,,,,

4. A Show Cause Notice dated 07.05.2018 was issued to the appellant and an amount of Rs.4,94,94,638/- was proposed as recoverable under Rule 14",,,,

of CENVAT Credit Rules, 2004 read with Section 11A (4) along with interest under ibid Rule 14 read with section 11AA of Central Excise Act,",,,,

1944. The penal provision under Rule 15 of CENVAT Credit Rules, 2004 read with section 11AC of Central Excise Act were also invoked for",,,,

contravention of provision of said Rules by way of wrong and fraudulent availment of CENVAT Credit, by suppressing the facts from the department",,,,

with clear intention to evade payment of duty.,,,,

5. The appellant submitted reply to show cause notices vide their letter dt. 01.10.2018 and inter-alia denied the allegation made in show cause notice.,,,,

The appellant contested the demand of duty besides assailing extended period of limitation and penal provisions.,,,,

6. The Ld. Commissioner decided the case vide the impugned order and demanded duty of Rs.4,94,94,638/- under section 11A(10) of the Central",,,,

Excise Act, 1944 along with interest under the proviso to Rule 14(1)(ii) of CENVAT Credit Rules, 2004 read with section 11AA of the Central Excise",,,,

Act, 1944. A penalty of Rs.4,94,94,638/- was also imposed under proviso to Rule 15(2) of CENVAT Credit Rules, 2004 read with section 11AC(1)(c)",,,,

of the Act.,,,,

7. Being aggrieved, by the impugned order, the appellant has filed the present appeal on the grounds as stated in the Memorandum of Appeal.",,,,

8. Sh. Sudhir Malhotra, Advocate the Ld. Counsel for the appellant submits that department has worked out excess availment of CENVAT credit",,,,

based on reverse calculation i.e. the value of raw material consumed has been arrived from the total CENVAT credit declared in the ER-1 returns by,,,,

dividing it with the rate of duty i.e. 12.36% or 12.50 %. The value so arrived from CENVAT credit taken was compared with the value from material,,,,

consumed shown in the Balance Sheet. The excess CENVAT credit has been worked out on the differential value between the values arrived from,,,,

ER-1 returns qua Balance sheets of respective financial year. He submits that ER-1 return does not show CENVAT credit on raw material,,,,

consumed; the CENVAT credit taken on receipt of inputs are shown in the ER-1 returns. The appellant also received quantity discount on lifting,,,,

particular quantity during a month from Steel Authority of India Ltd., Zinc supplier etc. e.g for lifting 500 MT of product in a month, a discount @",,,,

Rs.100/- MT was allowed and credit note to this effect was issued by the supplier and the appellant in the case of quality dispute of the product has,,,,

issued debit note to the supplier. There were different rates of duty on different inputs consumed on production of final products i.e. on iron & steel,,,,

products the duty was 12.36% or 12.50%; on Coal Tar duty was 6.18% and on Furnace oil duty was 14.42%. The department neither has taken note,,,,

of these factors nor has investigated from any consignor of raw material or from any transporter to determine non receipt or short receipt of inputs;,,,,

that there is no allegation of any flow back and that there is no inculpatory statement brought on records to substantiate receipt of cenvatable invoices,,,,

without/short receipt of goods thereto. He states that there is no statutory provisions under Central Excise Law which empowers the Department to,,,,

arrive at excess CENVAT credit by the formula as relied upon by Learned Adjudicating Authority. The ld. Counsel further submits that the value of,,,,

raw material purchased/ consumed and shown in the Balance Sheet does not include the value of fuel expenses i.e. coal and furnace oil. The value of,,,,

fuel expenses are separately shown in the Balance Sheet. The extended period of limitation has incorrectly been invoked and penalty incorrectly,,,,

imposed. The Ld. Counsel also relied upon various case laws in support of his contentions.,,,,

9. The Ld. Authorized representative of department justified the findings of Learned Adjudicating Authority.,,,,

10. Heard both the sides through video conferencing and perused the appeal records.,,,,

Sl. No.,Audit conducted by,Period of Audit,"Date of Audit

conducted",Remarks

1.,"Central Excise Audit

party","F.Y. 2008 â?

2009","08/02/2010 TO

11/02/2010",

2.,"Central Excise Audit

party","F.Y. 2009 â?

2010","22/11/2010 TO

23/11/2010",

3.,"Central Excise Audit

party","F.Y. 2010 â?

2011","14/09/2011 TO

15/09/2011",

4.,"Central Excise Audit

party","F.Y. 2011 â?

2012","06/11/2012 TO

08/11/2012",

5.,"Central Excise Audit

party","F.Y. 2012 â?

2013","18/12/2013 TO

21/12/2013",

