(2021) 12 CESTAT CK 0042

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52711 Of 2019

M/s Eastern Refractories Limited — APPELLANT

Vs

Commissioner, Goods And Service Tax, Customs And Central Excise — RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:
Central Excise Tariff Act, 1985 — Chapter 69
Central Excise Act, 1944 — Section 11AA, 11AC

Citation : (2021) 12 CESTAT CK 0042

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Heard both the parties.

2. The appellant is, inter alia, engaged in the manufacture of H.A. bricks/Fire Clay bricks, etc falling under Chapters 69 of the First Schedule to the Central Excise Tariff Act, 1985 (CETA) and avails cenvat credit on inputs, capital goods and input services, in accordance with the provisions of the Cenvat Credit Rules, 2004 ('Credit Rules").

3. The appellant sells its final products through stockiest/agent, namely TRL Krosaki Refractories Ltd., Orissa to the customers on Free on Road ("FOR") destination basis, and consequently, remains responsible for getting the goods delivered till the buyer's premises. The appellant bears the risk of loss while the goods are in transit and the property in the goods passes from the seller to the buyer and the sale takes place at the customer's place. Further, the transportation cost was included in the basic sale price/assessable value, on which central excise duty has been duly discharged by the appellant. These are undisputed facts. Thus, the appellant avails the services of Goods Transport Agency ("GTA") for outward transportation of its final products from the factory to its buyer's premises and accordingly, availed the Cenvat credit of service tax

paid on such GTA services.

4. A show cause notice dated 21.03.2018 was issued to them and subsequently, the proceedings were finalized by the Adjudicating Authority vide Order-in-Original dated 26.07.2019, wherein cenvat credit of Rs.13,61,786/- was disallowed and ordered for recovery of the same with interest under Section 11 AA of the Central Excise Act, 1944 and a penalty amount of Rs.13,61,786/- under Section 11 AC of the Central Excise Act, 1944 was imposed.

5. Being aggrieved with the Order-in-Original dated 26.07.2019, the appellant filed appeal before the ld. Commissioner (Appeals), who vide the impugned order-in-appeal dated 30.09.2019 confirmed the demand of cenvat credit by upholding the findings of the order-in-original.

6. Aggrieved by the impugned order-in-appeal, the appellant has preferred this appeal.

7. I have examined the submissions. The appellant manufacturer has undertaken sale of H.A. [High Availability] bricks/F.C. [Fire Clay] bricks on FOR destination basis, and the transportation cost was included in the sale price, on which central excise duty has been discharged. The Adjudicating Authority has denied the cenvat credit taken by the appellant on the outward transportation from the factory to the dealer's premises.

8. Having considered the rival contentions, I find that in the facts and circumstances of this case, the 'place of removal' is the premises of the buyer, not the factory gate of the seller, as the finished goods are cleared by the appellant on "FOR destination basis". Accordingly, I hold that the appellant is entitled to cenvat credit on the GTA services for outward transportation of the goods sold on FOR destination basis. Accordingly, the appeal is allowed. The impugned order is set aside. The appellant is entitled to consequential benefits in accordance with law.

[Order dictated & pronounced in open court]

