(2014) 01 CESTAT CK 0005

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Stay Application No. 57418 Of 2013 In Appeal No. 56874 Of 2013

?M/s. Gmtd. Bsnl — APPELLANT

Vs

CCE & ST, Jaipur-II — RESPONDENT

Date of Decision : 06-01-2014

Acts Referred:

Citation : (2014) 01 CESTAT CK 0005

Hon'ble Judges : Archana Wadhwa, J;Rakesh Kumar, Technical Member

Bench : Division Bench

Advocate : O.P. Agarwal, U.K. Srivastava

Final Decision : Allowed

Judgement

1. After dispensing with the condition of pre-deposit of dues, we proceed to decide the appeal itself inasmuch as the issue stands covered by the High Court's decision in the case of CCE, Bangalore Vs. Bill Forge Pvt. Ltd. reported in 2011-TIOL 0799-HC-KAR-CX. As per facts on record, the appellant's availed 100% cenvat credit of duty paid on the capital goods, in the first year of its receipt, whereas they were only to avail 50% in the first year and the 50% in the next financial year. The proceedings were initiated against them for denial of credit as also for claim of interest and imposition of penalty.

2. The original adjudicating authority Confirmed confirmation of demand along with interest and imposed penalty. On appeal against the same, the Commissioner (Appeals) observed that the balance 50% credit was available to the assessee in the next financial year and as such, there is no justification for confirmation of the same. He also held that as there was no malafide on the part of the assessee and the excess availed credit was kept in the account books only and not utilized imposition of penalty was not justified. Accordingly, he set aside the confirmation of demand and penalty. However, he confirmed the interest of Rs.2,29,911 /- by taking note of the Hon'ble Supreme Court's decision in the case of UOI Vs. Ind-Swift Lab. Ltd. reported in 2011 (265) 3 ELT

3. Hence the present appeal.

4. After hearing both the sides, we find that the short issue involved in the present case relates to the interest of Rs.2,29,911/-, confirmed by the lower authorities on the ground that even though the excess credit taken by the appellant was not utilized by them and remained only as a paper entry, who are liable to pay interest as per the declaration of law by the Hon'ble Supreme Court in the case of Ind-Swift Lab (supra).

5. We find that the Hon'ble Supreme Court's decision in the case of Ind- Swift Lab. (supra) was taken note of by the Hon'ble Kamataka High Court in the case of CCE, Bangalore Vs. Bill Forge Pvt. Ltd. reported in 2011 -TIOL 799 HC-CX and after interpreting the declaration of law by the Hon'ble Supreme Court, the Hon'ble High Court held that where the excess credit availed is not utilized by the assessee and remained unutilized in their account books, the assessee cannot held liable to pay any interest. The said decisions of the Kamataka High Court in the case of Bill Forge Pvt. Ltd. (supra) sands followed by the Tribunal in the number of decisions. One such reference can be made to the Tribunal's decision in the case of Gartex reported in 2013-TIOL-1931-CESTAT-DEL. As we find that the Commissioner (Appeals) has categorically given a finding that credit was un-utilised and there is no dispute about the same, the ratio of law declared by the Hon'ble Karnataka High Court would be fully applicable. Vie accordingly set aside the confirmation of interest of Rs.2,29,911/-. We make it clear that the said order would not relate to interest amount which already stands deposited by the appellant in one of the show cause notices.

6. The stay petition as also appeal stand allowed in the above terms.

