(2023) 07 CESTAT CK 0047

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 41678 Of 2013

M/S. Manaksia Limited APPELLANT

Vs

Commissioner Of GST & Central Excise RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 3(7)(1), 3 (7)(a), 15(2)
Central Excise Act, 1944 — Section 11AC

Citation : (2023) 07 CESTAT CK 0047

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao,Member (T)

Bench : Division Bench

Advocate : N. Viswanathan, Harendra Singh Pal

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that appellant is a 100% EOU Depot and has taken the dealer registration for the purpose of passing cenvat credit to buyers. During the perusal of the cenvat credit passing invoices issued by the appellant depot it was found that the depot was passing on incorrect cenvat credit without applying the formula as set out in Rule 3 (7) (a) of Cenvat Credit Rules, 2004 with respect to clearances made from 100% EOU. Show cause notice dated 28.05.2010 was issued alleging contravention of Rule 3 (7) (a) of Cenvat Credit Rules, 2004 and proposing to impose penalty under Rule 15 (2) of CCR 2004. After due process of law, the original authority held that the appellant depots / dealer deliberately had not mentioned that the goods originated from 100% EOU and as thus passed on excess duty to the buyers. A penalty of Rs.2,92,019/- was imposed under Rule 15 (2) of the Cenvat Credit Rules, 2004. Against such order, the appellant filed appeal before the Commissioner (Appeals) who vide order impugned herein upheld the same. Hence this appeal.

2. Ld. Counsel Sri N. Viswanthan appeared and argued for the appellant. It is

submitted that the appellant undertakes manufacture of aluminium alloys/ingots/ sheets and coils holding the status of an EOU at their factory located in West Bengal. The appellant had a depot at Madhavaram, Chennai to distribute the goods to their customers which they had registered as a dealer for passing the cenvat credit of the duties paid on the supply of their manufactured goods. The appellant was duly complying with their obligations cast under the Cenvat Credit Rules. It is submitted that the allegation that appellant has contravened the Rule 3 (7) (1) of erstwhile Cenvat Credit Rules, 2004 is factually and legally incorrect. It is submitted that the said provision deals with availment of credit for use in the manufacture of the final product or in providing output service. The said provision is for calculation of the credit that can be availed by manufacturer of final product or provider of output services. The said rule is not applicable to the appellant which is a depot. The said rule speaks about the restriction of the cenvat credit which can be availed by manufacturer or provider of output service. It does not state anything about the credit to be passed on the invoices issued by depot/dealers. Show cause notice has been issued invoking wrong provisions of law and for this reason itself, the penalty imposed cannot sustain.

3. Ld. Counsel submitted that the penalty imposed is under sub rule (2) of Rule 15 of CCR 2004. The said rule provides for imposing penalty upon an assessee who has wrongfully availed or utilized the credit. The appellant has not availed or utilized credit for discharge of duty. The appellant has only issued cenvatable invoices. The penalty imposed is therefore not sustainable and prayed that the same may be set aside.

4. The decision in the case of B. Lakshmichand Vs GOI - 1983 (12) ELT 322 (Mad.) was relied.

5. Ld. A.R Sri Harendra Singh Pal appeared and argued for the Department. Ld. A.R adverted to para 8.4 of the OIO and submitted that the verification of the depot invoices revealed that the appellant / dealer had not stated in their invoices that the goods had originated from an EOU which has resulted in passing excess credit to the buyers. Ld. A.R prayed that the appeal may be dismissed.

6. Heard both sides.

7. The penalty has been imposed under Rule 15 (2) of Cenvat Credit Rules. The said rule reads as under :

“In a case, where the CENVAT credit in respect of input or capital goods has been taken or utilized wrongly on account of fraud, willful misstatement, collusion or suppression of facts, or contravention of any of the provisions of the Excise Act or the rules made thereunder with intention to evade payent of duty, then, the manufacturer shall also be liable to pay penalty in terms of the provisions of section 11AC of the Excise Act.”

8. It can be seen from the above that the said provision speaks about wrongful

availment and utilization of cenvat credit. The appellant being a dealer has not availed or utilized the credit. Further it is also stated that the manufacturer shall be liable to pay penalty. This means that the manufacturer or the service provider who avails the credit wrongly or utilizes the credit wrongly is held liable to pay penalty for such wrongful act. There is no allegation in the SCN that the appellant availed credit or utilized the same. In such circumstances, the penalty imposed cannot sustain. The impugned order is set aside. Appeal is allowed with consequential relief, if any.

