(2021) 09 CESTAT CK 0059

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 87752 Of 2018

M/s. Mantri Mettalics Pvt. Ltd. APPELLANT

Vs

Commissioner Of Central Tax And Central Excise, Kolhapur RESPONDENT

Date of Decision : 27-09-2021

Acts Referred:

Central Excise Act, 1944 — Section 11AA, 11AC, 11AC(1)(c)
Cenvat Credit Rules, 2004 — Rule 4(5)(a)

Citation : (2021) 09 CESTAT CK 0059

Hon'ble Judges : Dr. Suvendu Kumar Pati, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. Order dated 10.04.2018 passed by the Commissioner of Central Tax (Appeals) for payment of interest on reversed CENVAT credits for the extended period, when penalty under Section 11AC was set aside, is assailed in this appeal.

2. Facts of the case, in a nutshell, is that appellant had purchased 10 capital goods and availed CENVAT credits to the tune of Rs.29,41,851/- between the period September, 2011 to May, 2014 despite the fact that those machines were installed outside the factory of the appellant but in the premises of appellant sister concern except one in the proprietorship firm of the wife of the Director of appellant's company. As it failed to reverse the credits against those machines within 180 days of its purchased and installation that violated Rule 4(5)(a) of CENVAT Credit Rules, 2004, it was asked to reverse the credit alongwith interest and penalty vide show-cause notice dated 06.10.2016 by invoking extended period. The basis of such show-cause notice was that unless investigation was conducted on the basis of intelligence gathered, appellant would have continued with the availment of such credits. The matter was adjudicated upon where except capital goods involving credit of Rs.3,12,992/- against the goods installed in the appellant's premises, rest of demand alongwith interest and penalty were confirmed by the adjudicating authority vide Order-in-Original dated 17.10.2017.

Appellant preferred an appeal before the Commissioner (Appeals) dated 10.04.2018 who set aside the penalty on the ground that it was just a procedural irregularity and not meeting the requirement of Section 11AC(1)(c) but confirmed the interest even for the extended period. Appellant is before this Tribunal against such confirmation of interest.

3. I have heard both the parties at length on the other day and perused the case record as well as written submissions and case law citations. Both parties have tried to delve into the issue once again concerning the legality of duty demand and reversal of CENVAT credit etc. but this issue is to be kept confined to the legality of imposition and confirmation of interest on the credit reversed before issue of show-cause notice. As can be noticed, show-cause cum-demand notice was issued on 06.10.2016 for recovery of credit of Rs.29,41,851/- against reversal of credits of Rs. 31,39,532/- made on 23.02.2016. It is needless to mention here that learned Commissioner (Appeals) had treated the other units as the sister concerns of the appellant in which the capital goods were installed (para 7.1 and 7.3 of his order). However, he has confirmed the interest component as to him it is a civil liability under Section 11AA of the Central Excise Act and the same is unrelated to the intention of the appellant to evade payment of tax, though he found imposition of penalty as harsh punishment unless there is clear evidence of fraud, mis-statement or suppression of fact etc. with an intention to evade payment of Central Excise duty and he was satisfied that appellant had accepted the mistake and reversed the credit (duty). Such a finding on the learned Commissioner (Appeals) attained finality as no appeal is preferred by the respondent-revenue department against such order, which learned Authorised Representative submits to be not appealable as covered under litigation policy. It is a settled principle of law that if the assessee feels it a duty to pay or discharge tax liability of any past period, there is no prohibition to do so but such a liability can never be realised through the process of law unless the statute authorised the respondent-department to travel beyond the stipulated period as liability of the person to pay duty for the extended period would arise only when his/her intention to evade payment of duty is established. Be that as it may, in the instant case, the issue is reversal of credits which appellant had made immediately upon bringing the fact to its knowledge and much before issue of show-cause notice. Moreover, such reversal was done from the credits available in its account, in which case no interest is payable in view of the plethora decision of available on this issue, one of that being reported in 2007 (215) ELT 3 (SC) in the case of Commissioner of Central Excise, Mumbai Vs. Bombay Dyeing & Mfg. Ltd. Hence the order.

ORDER

4. The appeal is allowed and the order passed by the Commissioner of Central Tax (Appeals-I), Pune vide Order-in-Appeal No. PUN-EXCUS-001-APP-0009/18-19 dated 10.04.2018 imposing interest on reversed CENVAT credit is here by set aside.

(Order pronounced in the open court on 27.09.2021)

