(2016) 05 CESTAT CK 0001

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Customs Appeal No. 60314 Of 2013

Sidhi Vinayak Induction Pvt. Ltd — APPELLANT

Vs

C.C.E, And S.T.-Jaipur-I — RESPONDENT

Date of Decision : 09-05-2016

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 72
Cenvat Credit Rules, 2004 — Rule 2(k), 15(2)
Central Excise Act, 1944 — Section 11AC

Citation : (2016) 05 CESTAT CK 0001

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Jatin Mahajan, G.R.Singh

Final Decision : Partly Allowed

Judgement

1. This appeal is directed against the impugned order dated 06.09.2013 passed by the Commissioner (Appeals), Customs and Central Excise, Jaipur,

upholding confirmation of cenvat demand along with the interest and penalty imposed in the adjudication order.

2. Brief facts of the case are that the appellant is engaged in manufacture of M S Ingots, falling under chapter 72 of the Central Excise Tariff Act,

1985. During the disputed period April 2008 to July 2009, the appellant had availed cenvat credit of Central Excise duty paid on M.S. Angles, H.R.

Coils, Sections, Joints, Channels, Cements etc., treating the same as capital goods. Taking of cevant credit was disputed by the department on the

ground that the disputed goods are neither confirming to the definition of inputs nor capital goods.

3. The Ld. Advocate appearing for the appellant submits that the appellant is not contesting the demand of cenvat credit along with interest confirmed

by the authorities below. He submits that the prayer of the appellant is for setting aside the penalty imposed by the authorities below. To support such

stand, the Ld. AR submits that there were divergent views by different judicial forums regarding entitlement of cenvat credit on the disputed goods,

and thus the appellant entertained a bonafide belief that cenvat credit is available on such goods, and accordingly, availed such credit in the books of

account. Since there is no element of suppression fraud, collusion misstatement etc, with intention to avail fraudulent cenvat credit, penalty cannot be

imposed under Section 11AC of the Central Excise Act, 1944 read with Rule 15(2) of the Cenvat Credit Rules, 2004.

4. On the other hand, the Ld. DR appearing for the respondent reiterates the findings recorded in the impugned order

5. Heard both sides and perused the case records.

6. I find that the issue regarding entitlement of cenvat credit on disputed goods were highly debatable and the Larger Bench of this Tribunal in the

case of Vandana Global Ltd. Vs. CCE 2010 (253) E.L.T. 440(Tri. LB) has held that Central Excise duty paid on such goods are not available for

cenvat credit. I also find that the period involved in this case is from 15.04.2008 to 19.01.2009, which is prior to the date of amendment of Rule 2(k)

ibid and also pronouncement of the decision by this Tribunal in the case of Vandana Global (supra). Therefore, in the facts and circumstances of the

case, malafides cannot be attributed for imposition of penalty on the appellant.

7. In view of above, the appeal is partly allowed and the impugned order set aside to the extent of imposition of penalty on the appellant.

(Dictated and pronounced in the open court)

