(2021) 08 CESTAT CK 0003

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52917 Of 2019, 50928 Of 2020

Sunbeam Light Weighing Solutions Pvt Ltd — APPELLANT

Vs

Commissioner Of Central Excise Central Goods And Service Tax, Alwar — RESPONDENT

Date of Decision : 03-08-2021

Acts Referred:
Central Excise Act, 1944 — Section 11A

Citation : (2021) 08 CESTAT CK 0003

Hon'ble Judges : Rachna Gupta, J

Bench : Single Bench

Advocate : Aalok Arora, Yashvir Singh

Final Decision : Dismissed

Judgement

1. This is a order disposing of two appeals arising out of common Order in Appeal bearing No. 264/ 2019 dated 20.9.2019. The said order has been

assailed vide the impugned appeal. The factual matrix in brief is as follows:

The appellant is engaged in manufacture of motor vehicles part for two wheelers and four wheelers. During the course of audit of its records, it was

observed by the Department that the appellant had exported their finished goods to clients situated in various countries through ICD Patli, Gurgaon,

Haryana where â??Let exportâ?? order were given. Department formed an opinion that the appellant has wrongly availed the Cenvat Credit of

service tax amounting to Rs.1680450/- pertaining to â??let exportâ?? services i.e. rail freight BL charges, destination delivery charges, detention

charges etc. The appellant was alleged to have wrongly availed the inputs cenvat credit pertaining to Rs.27,803/- with respect to WCT services, rent a

cab service and credit of service tax on penalty and construction services during the period August 2015 to August 2016. Accordingly, a show cause notice bearing No. 3026 dated 21.7.2017 was served upon the appellant proposing reversal of said credit along with interest and imposition of penalty at the appropriate rate. Said proposal was confirmed vide Order-in - Original No. 78/EX/BHD-D/18-19 dated 18.1.2019. The appeal thereof has been rejected by order under challenge.

2. Being aggrieved the appellant is before this Tribunal.

3. I have heard Shri Aalok Arora, learned Counsel appearing for the appellant and Shri Yashvir Singh, learned Authorized Representative appearing for the Revenue.

4. It is submitted on behalf of the appellant that the appellant had already reversed the Cenvat Credit of input service as was demanded by the impugned show cause notice against the intimation to the Department by their letter dated 28.11.16. It is submitted that since the amount was reversed even before issuance of show cause notice, penalty has wrongly been imposed upon the appellant. Infact the extended period of limitation was not invokable as there is no suppression of facts that too with intent to evade payment of duty. The appellants were otherwise not required to intimate the particulars of input service on which Cenvat Credit is being availed. The findings are, therefore, prayed to be set aside. Both the appeals are prayed to be allowed.

5. Learned Authorized Representative while rebutting the arguments, has relied upon paragraph 7 of the order under challenge in these appeals wherein the Commissioner (Appeals) has given the sufficient reason to hold suppression against the appellant. Justifying the said findings, learned Authorized Representative has requested that the impugned appeals be dismissed

6. Keeping in view the rival contentions of the parties and perusing the entire record, I observe and hold as follows:

Since the reversal of Cenvat Credit has not been disputed, the amount rather stand deposited with the department much before initiation of present proceedings, the only issue to be adjudicated is as to whether the department has rightly invoked the extended period of five years, while making the demand for the period September, 2013 to August, 2016 vide Show cause notice dated 21.7.2017.

As per section 11A of Central Excise Act as was applicable at the time of issue of impugned show cause notice, the notice would have been served

within 2 years of noticing of short comings on the part of assessee. However sub section 4 thereof extend the said period to that of five years in case

it is observed that duty has not been paid or short paid or erroneously refunded by reason of fraud collusion or wilful mis-statement or suppression of

facts or contravention of any of the provisions of this Act or of the Rules made thereunder with intent to evade payment of duty.

7. Reverting to the facts of the present case, apparently and admittedly there was no disclosure on the part of appellant to the Department informing

the availment of CENVAT Credit post let export order. The information was given only after it was demanded by the Department post audit of the

appellant records. No doubt there is no provision in the CENVAT Credit Rules for disclosing the particulars of import service on which CENVAT

Credit is availed by the manufacturer nor there is any column in ER / ERI /ST 3 return to indicate various input service in respect of which CENVAT

Credit is taken but since system is based on self assessment scheme, the particular opportunity as prescribed Performa of return to be filed by the

assessee. Accordingly, I do not find any infirmity in the findings of Commissioner (Appeals) that being a private limited company engaged in the

manufacture / export of motor vehicle parts and availed CENVAT Credit since long is supposed to have knowledge of law and procedure laid down

with regard to availment of CENVAT Credit, ignorance of law otherwise is not a defense available. I, therefore, endorse the findings of the

Commissioner (Appeals) in the event of self assessment, it is not expected that assessee should not avail such irregular credit as are not permissible

by law and in case of bonafide wrong availment, the same should have been reversed on their own. In the present case, the said suo moto reversal is

apparently and admittedly not the fact. Reversal has been made only after it was pointed out by the Department. I do not find any reason for holding

the silence of the appellant till he was asked to be a positive act on his part. Thus I hereby hold that the appellant wrongly took the CENVAT Credit

on the services which were not eligible import service. Over and above, there is apparent admission of the appellant that the credit availed has been

wrong. Such case is definitively a case of suppression of facts that too with intention to evade payment of duty.

8. I draw my support from the decision of Honâ??ble High Court of Allahabad in the case of Touraids (I) Travel Service reported in [2014 (35) STR

234 (All)] as has earlier been relied upon by the Commissioner (Appeals). In view of this finding, I donâ??t find any infirmity in the order under

challenge where the penalty for the period April, 2013 to August, 2016 has been imposed upon the appellant. The order is accordingly is upheld.

Consequent thereto both the appeals stand dismissed.

(Pronounced in the open Court on 03.08. 2021Â Â Â Â Â Â Â Â Â Â)

