(2014) 01 MAD CK 0151

In the Madras High Court

Case No : Civil Miscellaneous Appeal No. 1418 of 2009

The Commissioner of Central Excise — APPELLANT

Vs

Customs Excise and Service Tax Appellate Tribunal, South Zonal Bench and M/s. S.L. Lumax Limited — RESPONDENT

Date of Decision : 10-01-2014

Acts Referred:
Central Excises and Salt Act, 1944 — Section 11AC 3 4 4A

Citation : (2014) 303 ELT 220 : (2014) 25 GSTR 10

Hon'ble Judges : T.S. Sivagnanam, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : P. Mahaadevan, for Customs, Excise and Service Tax, for the Appellant; S. Jaikumar for Respondent 2, for the Respondent

Judgement

T.S. Sivagnanam, J.—This appeal by the Revenue is directed against the Final Order passed by the Customs, Excise and Service Tax Appellate Tribunal [The Tribunal] dated 24.10.2008 in Final Order No. 1224 of 2008. The respondent/ assessee are the manufacturers of headlamp assembly and motor vehicles part falling under Central Excise Tariff heading No. 8512 and 8705. The assessee has been availing Cenvat Credit on inputs under Cenvat Credit Rules, 2002. During the period from April 2003 to March 2004, the assessee removed inputs as such, on which Cenvat Credit was availed and the credit was not reversed on the date of removal. This lead to a demand being issued to the assessee demanding interest of Rs. 67,349/- u/s 11AB of the Central Excise Act, 1944 on the ground that if the duty of excise has not been paid or has been short paid, the person liable to pay duty, has to pay interest on such belated payment.

2. Aggrieved by such order, the assessee preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) held that the duty liability having been paid prior to the issuance of show cause notice, the question of imposing penalty or demanding interest does not arise. As against this order, the Department preferred appeal to the Tribunal and the Tribunal dismissed the

appeal on the ground that there is no enabling provision in the Statute for recovering interest.

3. Challenging the same, the assessee has preferred this appeal, which has been admitted on the following questions of law:

1. Whether in the facts and circumstances of the case, the Tribunal is right in law in holding that there is no provision in the statute for enabling the recovery of the interest in case of delay in reversal/payment of the duty relatable to inputs removed as such, when there is an express provision in Section 11AB of Central Excise Act read with Rule 12 of the CENVAT Credit Rules, 2002 providing for recovery of interest when the conditions specified therein are satisfied?

2. Whether in the facts and circumstances of the case, the Tribunal is right in following the decision of the Tribunal in the case of 2004 (96) ECC 180 when the decision has been reversed by the jurisdictional High Court in the case of Commissioner of Central Excise Vs. Machino Montell (I) Ltd., , wherein it was held that mere deposit of duty before issuance of show cause notice will not suffice for not invoking interest and penalty u/s 11AB and Section 11AC of the Central Excise Act?

4. Heard Mr. P. Mahaadevan, learned Standing Counsel appearing for the Revenue and Mr. S. Jaikumar, learned counsel appearing for the respondent/ assessee.

5. It is fairly submitted by learned counsel appearing on either side that the issues raised before this Court in this appeal were not raised before the Tribunal or for that matter before the First Appellate Authority.

6. Learned Counsel appearing for the respondent/assessee also fairly submitted that the First Appellate Authority proceeded on the basis that the duty liability was paid prior to the issuance of show cause notice and therefore, the penalty and interest cannot be demanded when the facts of the instant case are totally different.

7. The contention of the Revenue is that as per Rule 3(4) of the Cenvat Credit Rules, 2002 when inputs or capital goods on which CENVAT credit was taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 7. Therefore, it is contended that the Tribunal erroneously held that there was no provision for payment of interest, especially, when there is a specific provision contained in Section 11AB of the Act.

8. Rule 3 of the Cenvat Credit Rules, 2002 deals with the circumstances under which the manufacturer or producer of final products shall be allowed to take credit. Sub-rule (3) of Rule 3 of the Cenvat Credit Rules, 2002 states that Cenvat Credit may be utilized for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are

removed as such or after being partially processed, or such capital goods are removed as such. The Proviso to Sub-rule (3) of Rule 3 of the Cenvat Credit Rules, 2002 provides that while paying duty, the Cenvat credit shall be utilized only to the extent such credit is available on the fifteenth day of a month for payment of duty relating to the first fortnight of the month, and the last day of a month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by a Notification based on value of clearances in a financial year, for payment of duty relating to the entire month.

9. Sub-rule (1) to Rule 3 of the Cenvat Credit Rules, 2002 would be of relevance in the instant case as the Revenue has placed reliance on such rule to justify the demand of interest. Sub-rule (3) and (4) to Rule 3 of the Cenvat Credit Rules, 2002 reads as follows:

Rule 3(3)- The CENVAT Credit may be utilised for payment of any duty of excise on any final products or for payment of duty on inputs or capital goods themselves if such inputs are removed as such or after being partially processed, or such capital goods are removed as such:

Provided that while paying duty, the CENVAT credit shall be utilized only to the extent such credit is available on the fifteenth day of a month for payment of duty relating to the first fortnight of the month, and the last day of a month for payment of duty relating to the second fortnight of the month or in case of a manufacturer availing exemption by a Notification based on value of clearances in a financial year, for payment of duty relating to the entire month.

(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the duty of excise which is leviable on such goods at the rate applicable to such goods on the date of such removal and on the value determined for such goods under sub-section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be, and such removal shall be made under the cover of an invoice referred to in Rule 7.

10. As noticed above, the case relates to clearances effected by the assessee during the period April 2003 to March 2004. Sub-rule (4) to Rule 3 of the Cenvat Credit Rules, 2002 was substituted by Notification No. 13/2003-CE (N.T.,)dated 01.03.2003. The substituted rule reads as follows:

(4) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, the manufacturer of the final products shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 7.

Sub-rule (4) to Rule 3 of the Cenvat Credit Rules, 2002 prior to its substitution states that the inputs or capital goods on which CENVAT credit has been taken, are removed from the factory as such, the manufacturer of the final product shall pay an amount equal to the duty of excise, which is leviable on such goods at the rate applicable to such goods on the date of such removal.

11. Therefore, the expression "on the date of such removal" is referable to the rate applicable to such goods and it cannot be understood to mean that the duty should be paid at the time of removal in terms of substituted provisions. The expression "on the date of such removal" stands deleted in the new Sub-rule (4) to Rule 3 of Cenvat Credit Rules, 2002 as cited supra.

12. Rule 8 of the Cenvat Credit Rules, 2002 deals with a manner of payment of duty and it states that (1) The duty on the goods removed from the factory or the warehouse during a month shall be paid by the 5th day of the following month. In terms of first proviso to Rule 8, in case of goods removed during the month of March, the duty shall be paid by the 31st day of March. For the purpose of this case, second proviso to Rule 8 would not be of relevance. Thus, in terms of Rule 8(1) r/w Sub-rule (4) to Rule 3 of the Cenvat Credit Rules, 2002, the duty shall be paid by the 5th day of the following month and in case, the goods removed during the month of March, the duty shall be paid by the 31st day of March.

13. It is not in dispute that the assessee has paid the duty at the end of the month, i.e., much prior to the 5th day of the following month or in case where the removal had taken place in March before 31st March of the relevant year. In such circumstances, it cannot be said that the there has been delay in payment of duty so as to invoke Section 11AB of the Central Excise Act, 1944. Even though the Tribunal has proceeded on the basis that the deposit was made prior to the issuance of show cause notice, on facts, we found, such a contention is not tenable.

14. It is evidently clear that the assessee has deposited the amount before the issuance of show cause notice, yet we do not think, we need to enter into the said question since essentially the assessee''s case falls within the scope of Rule 3(4) r/w Rule 8 of the Cenvat Credit Rules, 2002. In the circumstances, for the reasons given above, we reject the Revenue''s appeal. No costs.

