(2011) 04 KAR CK 0178

In the Karnataka High Court

Case No : CEA No. 14 of 2010

The Commissioner of Central Excise, Bangalore - I Commissionerate, Bangalore-560001 — APPELLANT

Vs

M/s. Bhuwalka Steel Industries Ltd., 10th Mile, Old Madras Road, Bandapura Village Bangalore-560049 — RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:
CENVAT Credit Rules, 2002 — Rule 7 (2), 9 (3)

Citation : (2012) 277 ELT 153

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : T.M. Venkata Reddy, for the Appellant; V. Lakshmi Kumaran and Sri V. Sridharan, for the Respondent

Judgement

N. Kumar, J.—This appeal is preferred by the revenue challenging the order of the Tribunal, wherein the Tribunal has set aside the order passed by the adjudicating authorities and held that disallowing of Modvat credit is improper.

2. The assessee during the period from August, 2004 to March, 2005 procured inputs that is MS ingots for manufacture of final products and availed Cenvat credit on the inputs received by them through the registered dealers. The authorities issued a show cause notice to the assessee calling upon them to show cause as to why the Cenvat credit needs to be disallowed. The allegation was that the dealer from whom he purchased these inputs never exists at the address mentioned in the invoice. Therefore it was a case of irregular availment of Cenvat credit. The assessee gave his reply pointing out that they have procured these inputs under invoice issued by the dealer. They are consumed by them in their factory premises. Merely because the dealer from whom they have purchased these inputs shifted his business premises and on the day the said purchase was made he was not there, at the premises mentioned therein, they cannot be denied Cenvat credit; Overruling the said objection the demand was confirmed

and the assessee was directed to pay interest and penalty. Aggrieved by the said order the assessee preferred an appeal before the Tribunal. The Tribunal after taking note of the Judgments held that there is no denial that the input which was purchased by the appellant were duty paid and consumed by the assessee in the factory premises, and they cannot be denied the Cenvat credit and therefore it set aside the order of the adjudicating authority and allowed the appeal and granted the benefit. Aggrieved by the said order the present appeals are filed.

3. This appeal is admitted to consider the following substantial questions of law:-

(a) Whether the Hon''ble CESTAT is correct in law by allowing the Cenvat Credit based on invoices, issued by dealers who did not exist at the address given in the invoices and which are not valid as per law ?

b) Whether the Hon''ble CESTAT is correct in allowing the Cenvat Credit benefit to the respondent on the basis of the invoices issued by the non existent dealer when Rule 7(2) 9(3) of the Cenvat Credit Rules, 2002/2004, clearly stipulates that the manufacturer taking credit should satisfy himself about the identity and address of the supplier of the inputs ?

4. The material on record clearly discloses that the dealer who has issued the invoice has shifted the premises and that the premises from where the invoices were issued are the premises where the dealer did not have any office or business activity going on. However, there is no denial of the fact that the inputs which were produced by the appellant is duty paid and they were received and consumed by the assesses in the factory premises. The assessee was required give all the particulars of the goods procured by them and the details of the duty paying document. The invoice produced by the assessee contains all the necessary particulars. The authority has not recorded any finding that there is no such dealer in existence or that no inputs were supplied by him or that any duty was paid on such inputs. There is also ho finding that the inputs were not received in the factory premises or it was not used in the manufacturing process. In the absence of any such finding and all those facts having been established the Tribunal held that the benefit of Cenvat credit cannot be denied to the dealer who has paid the duty. In that view of the matter, we do not see any justification to interfere with the well considered passed by the Tribunal. Thus the substantial questions of law is answered in favor of the assessee and against the revenue.

