

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Civil Miscellaneous Appeal No.1277 of 2015
& M.P.No.1 of 2015

M/s.Automotive Coaches & Components Ltd.
PL Haulwel Trailers Division
Unit II-A-18, 19 & 20
Industrial Estate, Mettupalayam,
Pondicherry - 605 009
Pondicherry.

... Appellant

versus

1. Commissioner of Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue, Beach Road,
Puducherry - 605 001.
2. Customs, Excise & Service Tax Appellate Tribunal,
Shastri Bhavan, Annexe Building,
I Floor, 26 Haddows Road,
Chennai - 600 006.

... Respondent

Appeal filed under Section 35G of the Central Excise Act as against the order dated 07.05.2014 made in Appeal No.E/40519/2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai.

For Appellant : Mr.R.Raghavan

For Respondent : Mr.A.P.Srinivas

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J U D G M E N T

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

This Civil Miscellaneous Appeal is filed against the order dated 07.05.2014 made in Appeal No.E/40519/2014 on the file of the Customs, Excise and Service Tax Appellate Tribunal, Chennai disallowing the credit availed by the appellant.

2. The brief facts of the case are as follows:

The assessee/appellant is engaged in the manufacture of trailers and the parts thereof falling under Tariff Item No.8716.00 of the First Schedule to the Central Excise Tariff Act, 1985. They have availed cenvat credit on the strength of documents issued by Volvo India Private Limited, consigned to M/s.Nav Bharat Corporation. It is stated that the appellant received the material in their factory during the months of January 2002 to August 2002 and availed cenvat credit on different dates on the basis of 8 invoices issued by M/s.Volvo India Pvt. Ltd.

3. Alleging that the appellant had availed ineligible cenvat credit based on the documents issued by M/s.Volvo and addressed to M/s. Nav Bharat, Bangalore as per Rule 12 of the Cenvat Credit Rules, read with proviso to Section 11A(1) of the Central Excise Act, 1944, show cause notice was issued to the appellant proposing to disallow the ineligible credit and for imposition of penalty and interest. After due process of law, the Adjudicating Authority reversed the credit and gave a finding as follows:

"In terms of the provisions of Rule 7(1)(a) of the CENVAT Credit Rules, 2002, CENVAT Credit can be taken by the manufacturer on the basis of an invoice issued by a manufacturer, an importer of a first/second stage dealer in terms of the provisions of the Central Excise Rules, 2002. In terms of Rule 11 of the Central Excise Rules, 2002, "no excisable goods shall be removed from a factory or warehouse except under an invoice....." As per sub-rule (2) of this Rule, "The invoice... shall contain the registration number, name of the consignee, description....". Thus, to avail credit, one of the rudimentary requisites is that the goods should be consigned to the person intending to avail the credit or else, the goods should be endorsed to him by the consignee. An invoice on which credit is sought to be taken would therefore, be specific to that consignee and unless specifically permitted by law, credit cannot be taken of the duty shown to have been paid on that invoices(s) by

anyone other than the consignee. I have perused the invoices in questions. I find that M/s.Volvo, the manufacturer have consigned the subject goods to Ms.Nav Bharat, Bangalore. Nowhere in the said invoices I find either mention of M/s.P.L.Haulwel as the consignee nor has any endorsement been made to the effect that the subject goods are actually consigned to them. Also, no documentary proof has been produced either to prove the fact that M/s.Nav Bharat, in turn, have consigned the subject goods to M/s.P.L.Haulwel or, that the said goods were actually received into their factory and used in the manufacture of final products. It is only M/s.P.L.Haulwel's contention that the subject goods were received by them and put into use in the manufacture of final products. This being the case, I am not inclined to accept M/s.P.L.Haulwel's contention that the Rule 7 of the CENVAT Credit Rules, 2002 does not specify that the invoice based on which credit is availed should be in the name of the CENVAT manufacturer availing credit."

4. With regard to the contention of the assessee there was no suppression, the Adjudicating Authority observed as follows:

"As regards M/s.P.L.Haulwel's contention that there was no suppression, in terms of sub-rule (4) to Rule 7 of the CENVAT Credit Rules, 2004, the burden of proof regarding admissibility of credit lies on the manufacturer availing credit. No proof has been placed before me to show that the Department was aware of the issue during the material period and neither has any proof been submitted to support the claim that the subject goods were actually received into the factory and put into use in the manufacture of the final products. Therefore, the invoking of extended period of limitation is justified."

5. Consequently, the Adjudicating Authority, passed the following order:

"I direct recovery of a sum of Rs.8,34,784/- (Rupees Eight Lakhs thirty-four thousand seven hundred and eighty-four only) being, the credit erroneously availed under Rule 12 of the CENVAT Credit Rules, 2001/2002 read with proviso to Section 11A(1) of the Central Excise Act, 1944;

(ii) I direct recovery of appropriate interest on the erroneous credit availed under Rule 12 of the CENVAT

Credit Rules, 2001/2002 read with Section 11AB of the Central Excise Act, 1944; and

(iii) I impose a penalty of Rs.8,34,784/- (Rupees Eight Lakhs thirty-four thousand seven hundred and eighty-four only) under Section 11 AC of the Central Excise Act, 1944.

(iv) I also impose a penalty of Rs.10,000/- (Rupees ten thousand only) under sub-rules (1) and (2) of Rule 13 of the CENVAT Credit Rules, 2001/2002."

6. Aggrieved by the above-said order of the Adjudicating Authority, the assessee filed an appeal before the Commissioner (Appeals), who rejected the appeal holding as follows:

"I have gone through the records of this case and also the oral and written submissions made by the appellant during the personal hearing.

The crux of the matter is as narrated in para 3 of the Show Cause Notice:

"The assessee had stated that originally M/s.Volvo India during October 1998 and Feb 1999 have manufactured and cleared 8 Nos. of old Flat Bed Trailers on payment of duty of Rs.1,04,348/- on each of the Trailer valued at Rs.6,95,652/-. The items were received by the assessee from Nav bharat, and they have manufactured 8 Tipping Trailers by using a few materials viz., suspension, Axles, Brakes, Electricals, Wheel Rims and landing Gears which were salvaged from the 8 Nos. of old Flat Bed Trailers so received from Nav bharat. The said credit of Rs.8,34,784/- was taken on the strength of such invoices issued by M/s.Volvo to M/s.Nav Bharat for the clearances of the Flat Bed Trailers manufactured by them during the year 1998-1999".

The payment of duty in respect of the Flat Bed Trailers manufactured by M/s. Volvo India for clearance to M/s. Nav Bharat was in the years 1998 and 1999. The said Flat Bed Trailers were sent by M/s.Nav Bharat to the appellant in the year 2002 for salvaging Suspension, Axles, Brakes, Electricals, Wheel Rims and landing gears therefrom and Manufacture of 8 Tipping Trailers thereupon. The appellant had taken credit on the basis of the Volvo invoices of 1998-99 consigned to Nav Bharat in respect of the Flat Bed Trailers, he had received from M/s. Nav Bharat in the year 2002. The procedural safeguards like 'invoice should be in the name of claimant of credit' etc

have been built into the system for the very purpose of ensuring that such misuses don't occur. Such credit is disallowable on that very score. The allegation of suppression also holds goods as it was only during Audit of their accounts that this misavailment of credit surfaced. Viewed in this context, the observations of the LAA have to be necessarily upheld - and the digressions of the appellant are to be rejected. The imposition of penalties and charging of interest are appropriate. Therefore I have no hesitation in upholding the Orders of LAA and rejecting the appeal. Appeal Rejected."

7. Aggrieved by the same, the assessee pursued the matter once again before the Tribunal. Before the Tribunal, the assessee relied on the Board's Circular No.607/44/2001-CX dated 13.12.2001 and the decision of the Tribunal in the case of Hitesh Plastic Pvt. Ltd. Vs. CCE & CC Vapi - 2009 (243) ELT 419 (Tri.-Ahmd.). The Tribunal on a careful analysis of the submissions and the reliance placed came to the conclusion that the reliance placed by the assessee was not applicable to the facts of the present case. The Tribunal, after relying upon Rule 16 and Rule 7(1) of the Cenvat Credit Rules, 2002, dismissed the appeal holding as follows:

"4. After hearing both sides and on perusal of the records, I find that the main contention of the learned advocate is that appellate received duty paid goods in their factory for being remade, reconditioned under Rule 16 of the CCR 2002. appellant received duty paid goods in their factory for being remade, reconditioned under Rule 16 of the CCR, 2002. The relevant portion of Rule 16 of the said Rule reads as under :-

Rule 16. Credit of duty on goods brought to the factory. - (1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being remade, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take Cenvat credit of the duty paid as if such goods are received as inputs under the Cenvat Credit Rules, 2002 and utilise this credit according to the said rules.

5. It is seen that Rule 16 permitted to receive duty paid goods at any factory for being remade, refined, reconditioned or for any other reason and the manufacturer shall be entitled to take cenvat credit of duty paid as if

such goods are received as "inputs" under the Cenvat Credit Rules, 2002. The ld. AR contended that the appellant availed the credit on the basis of documents, which are not prescribed under Rule 7 of the Cenvat Credit Rules, 2002. For the purpose of proper appreciation, Rule 7(1) of CCR is reproduced below :-

Rule 7. Documents and accounts. - (1) The Cenvat credit shall be taken by the manufacturer on the basis of any of the following documents, namely :-

- (a) an invoice issued by -
 - (i) a manufacturer for clearance of -
 - (I) inputs or capital goods from his factory or from his depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;
 - (II) inputs or capital goods as such;
 - (ii) an importer;
 - (iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;
 - (iv) a first stage dealer or a second stage dealer, in terms of the provisions of Central Excise Rules, 2002;

6. In the present case, it is seen that the appellant availed credit on the basis of invoices issued by M/s. Volvo India Pvt. Ltd. consigned to M/s. Nav Bharat Corporation. Admittedly, these invoices are not prescribed under Rule 7(1)(a) of the CCR, 2002. The learned advocate contended that duty paid goods were received by the appellant for being remade, refined, reconditioned or for any other reason from M/s. Nav Bharat Corporation who received the documents from M/s. Volvo India Pvt. Ltd. which would be covered under Rule 16. I am unable to accept this contention of learned advocate. The second part of the Rule 16 clearly stipulates that the duty paid goods should be received by the appellant and appellant shall be entitled to take cenvat credit under CCR, 2002. So they are eligible to avail the credit on the basis of documents as prescribed under CCR, 2002. As already stated, the invoices in question are not in the name of the appellant under Rule 7 of CCR and therefore the appellants are not eligible to avail the said credit. The case law relied upon by the learned advocate is not applicable in the present case. In the case of Hitesh Plastic Pvt. Ltd. (supra), the assessee cleared the final product to their customer who rejected

the same and the goods were brought back to assessee's factory on their own central excise invoices. In this context, the Tribunal observed that the assessee's own invoice can be considered as duty paid document in terms of Rule 7 of CCR.

7. Regarding the issue of time-bar, the learned advocate drew the attention of the Bench to their letter dated 15-1-2002 addressed to the Superintendent of Central Excise. In the said letter, the appellant informed that their customer, M/s. Nav Bharat Corporation sent duty paid trailers to remake and convert for required model. It is also stated that as per Rule 16 of the said Rules, they proposed to bring the duty paid trailers along with the documentary evidence for the duty payment and carry out modifications for converting the trailers as per customer's requirement and return back on payment of duty for the full value of remade trailers. The said letter is silent that the appellant availed credit on the basis of invoices of M/s. Volvo India Pvt. Ltd. It is a clear case that the appellants deliberately suppressed the name of M/s. Volvo India Pvt.Ltd. in their letter to evade payment of duty and extended period of limitation would be applicable.

8. In view of the above discussion, I do not find any reason to interfere with the order of Commissioner (Appeals). Accordingly, the appeal filed by appellant is dismissed."

8. Aggrieved by the said order of the Tribunal, the assessee is before this Court.

9. Heard learned counsel appearing for the appellant and the learned Standing Counsel appearing for the respondent and perused the materials placed before this Court.

10. It is seen that the appellant had availed cenvat credit on the basis of the invoices issued by M/s.Volvo India Pvt. Ltd., consigned to M/s.Nav Bharat Corporation, who in turn, sent the materials to the assessee for remade, refined, reconditioned or for any other reasons. Admittedly, the invoices in question are not in the name of the appellant.

11. A plain reading of Rule 16 and Rule 7(1) of the Cenvat Credit Rules, 2002 reveals that the duty paid goods should be received by the assessee for being remade, refined, reconditioned or for any other reason and they are entitled to take cenvat credit of the duty

paid, if such goods are received as inputs under the Cenvat Credit Rules, 2002.

12. In the present case, the assessee had stated that the manufacturer sent the goods to M/s.Nav Bharat Corporation, who in turn sent the same to the assessee for remake. The assessee did not show any documentary proof that the said goods were actually received into their factory and used in the manufacture of final products. To avail cenvat credit, the goods should be endorsed to him by the consignee. Hence, the invoice, on which the credit is taken, should be specific to that consignee. Unless, the invoice is specific, credit should not be availed. Rule 7(1) of the Cenvat Credit Rules, 2002, specifies that the invoice, based on which credit is availed, should be in the name of the person, who availed the credit. In the present case, the invoices in question are not in the name of the appellant. Hence, the appellant is not entitled to avail the credit. Therefore, the Department was justified in reversing the credit, which was affirmed by the Tribunal correctly.

13. On the plea of suppression, learned counsel appearing for the appellant tried to justify that invocation of extended period is bad. In this regard, he relied on the document dated 15.1.2002, wherein, the assessee had informed the Department with regard to the inputs received in their factory. However, that plea appears to be farfetched and an after thought. In response to the show cause notice with regard to the allegation suppression, the assessee stated as follows:

"The SCN seeks to invoke extended period of limitation on the plea that the invoices are not in the name of P.L.HAULWEL TRAILERS had not been brought to the notice in the monthly returns filed.

In response to (xi) above, it is submitted, the filing of return is not called into question. Further availability of invoices with the returns is also not called into question. Once details regarding invoice and the credit availed is on record the same can be verified. Just because such verification was not carried out, there cannot be an allegation of suppression. Late/Belated verification cannot lead to suppression. It is submitted, as the noticee believed that credit can be availed if they are in possession of the invoices referred in Rule-7[1] of CCR 2001/2002 and further received such inputs, such credit has been availed. This bona fide belief cannot be called into question. In this view of the matter,

there is no possibility to invoke longer period of limitation."

14. It is relevant to note that in the above-said response to the show cause, there is no reference to the document dated 15.1.2002 said to have been addressed to the Department. The Adjudicating Authority held that no proof has been placed before him to show that the Department was aware of the issue during the material period and no proof has been submitted to support the claim that the subject goods were actually received into the factory and put into use in the manufacture of the final products. This finding of the Adjudicating Authority was confirmed by the Commissioner (Appeals) as well as by the Tribunal.

15. In the light of the above, we find no reason to differ with the findings of the Authorities below. We find no question of law much less any substantial question of law arises for consideration in this appeal. Accordingly, this Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, M.P.No.1 of 2015 is also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

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To

Sub Assistant Registrar

1. Commissioner of Central Excise,
Puducherry Commissionerate,
No.1, Goubert Avenue, Beach Road,
Puducherry - 605 001.
2. Customs, Excise & Service Tax Appellate Tribunal,
Shastri Bhavan, Annexe Building,
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Chennai - 600 006.

+1cc to Mr.AP.Srinivas, Advocate, S.R.No.37555
+1cc to Mr.R.Raghavan, Advocate, S.R.No.37907

C.M.A.No.1277 of 2015
& M.P.No.1 of 2015

LRS (CO)
CA(27/08/2015)