IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.281 OF 2014

The Commissioner of Central Excise, Pune-I ... Appellant
versus
M/s.S.S.Engineers ... Respondent

Mr.Y.S.Bhate with Mr.J.B.Mishra for Appellant.

Mr.Prakash Shah with Mr.Prasad Paranjape and Mr.Jas Sanghavi i/by M/s.PDS Legal for Respondent.

CORAM : S.C.DHARMADHIKARI AND
G.S.PATEL, JJ.

DATE : 01 February 2016

PC :

1. Though Mr.Bhate appearing for the Revenue would try to persuade this Court and to the best of his ability that the Tribunal's order raises a substantial question of law, we are not ready to entertain this appeal.

2. The only apprehension based on which the order-in-original dated 21 August 2012 was passed by the Commissioner of Central Excise, Pune-I is that the Legislature intended not to permit cross utilization of the credit on excuse duty and service tax. That is how the CENVAT Rules, 2004 and particularly the rules referred by the Tribunal in paragraph 5 of its order are worded.

3. Ordinarily an interpretation of a rule and in the light of a substantive legislation on Central Excise and Service Tax, would have raised a substantial question of law. However, we find that the Tribunal has arrived at a conclusion that the credit is admissible during the course of manufacture of the final product of duty paid on inputs as well as service tax on the input service availed of. While availing of that credit, the cross utilization is not ruled out, leave alone barred or prohibited. That is how CENVAT credit rules have been analyzed. Rule 3(1) of the Rules provides that the manufacturer or producer of final products or a provider of output service shall be allowed to take credit on various duties and that is the substantive provision in the rules. That is titled "CENVAT Credit". That takes within its fold the duty of excise, other duties and service tax leviable under Section 66 of the Finance Act, 1994 and thereafter with effect from 18 April 2006, service tax leviable under Section 66A of the said Act. If these are various duties of which credit can be availed of, then, further sub-rules as analyzed by the Tribunal in paragraph 5 do not suffer from any perversity. The only difficulty that may have been presented throughout was of scrutiny and verification of the accounts. The accounts are maintained in relation to payments of both levies. Even that does not present any difficulty once the Revenue has issued a circular to guide the officers. That circular, a copy of which is handed over to us and contained in the compilation at page 36,

is dated 30 March 2010. It is on the subject of cross utilization of credit on inputs and input service. The Tribunal, therefore, has rightly come to the conclusion that there are certain restrictions on the utilization of particular type of duty and for that purpose it has relied on Rule 7 of CENVT Credit Rules. A reference to that also does not vitiate the impugned order inasmuch as Rule 7 states that input service distributor may distribute the CENVAT credit in respect of the service tax paid on the input service to its manufacturing units or units providing output service, subject to the conditions stipulated therein. In such circumstances, the cross utilization of credit on goods and services being not covered by any restrictive provision, leave alone any prohibition or embargo, the Tribunal's order does not call for any interference. The interpretation placed on the Rule is a probable and a possible view. That cannot be termed as perverse. Further, there is no revenue deficit muchless any loss. Hence, we do not think that the appeal deserves to be entertained. It does not raise any substantial question of law. Hence, the appeal is dismissed with no order as to costs.

(G.S.PATEL, J.) (S.C.DHARMADHIKARI, J.)

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