IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.3.2016

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.Nos.2128 & 2129 of 2010

The Commissioner of Central Excise
Chennai IV Commissionerate
692, MHU Complex, Nandanam
Chennai 600 035. ... Appellant in both CMAs/ Respondent

Vs.

M/s. Shinhan Plasto India Pvt. Ltd.
1-B, SIPCOT Industrial Park
Irungattukottai
Sriperumbudur 602 105. ... Respondent in CMA No.2128/10 /Applicant

M/s. Hyundai Motor India Limited
Plot No.H-1, SIPCOT Industrial Park
Irungattukottai
Sriperumbudur 602 105. ... Respondent in CMA No.2128/10 /Applicant

Appeals under Section 35G of the Central Excise Act, 1944, against the Final Order No.1804 & 1805 of 2009 dated 17.11.2009 against the Order of the Commissioner of Central Excise, Chennai IV, Commissionerate M.H.U Complex, 692, Anna Salai, Nandanam, Chennai 600 035 dated 20.05.2005 and made in C.No.V/15/84/412/04-Cx.Adj. on the file of Customs, Central Excise & Service Tax Appellate Tribunal, South Zonal Bench, Chennai.

For Appellant : Mr.A.P.Srinivas, Senior Panel Counsel

For Respondents : Mr.S.Muthuvenkataraman

J U D G M E N T

(Delivered by V.Ramasubramanian,J.)

These appeals are filed under Section 35-G of the Central Excise Act, 1944, by the Revenue, challenging an order of CESTAT.

2. Heard Mr.A.P.Srinivas, learned Senior Panel Counsel for the appellant/Department and Mr.S.Muthuvenkataraman, learned counsel for the respondents/assessees.

3. The respondent in CMA No.2128 of 2010 is a company to whom the respondent in the other appeal entrusted certain jobs on job work basis. The manufacturer, who is the respondent in the other appeal, sent capital goods to the job worker (respondent in the first appeal) under Rule 4(5)(a) of the Cenvat Credit Rules, 2002, without payment of duty.

4. But, the goods were not received back from the job worker before the expiry of 180 days. Therefore, the manufacturer paid duty and raised supplementary invoices for the impugned goods.

5. Taking exception to the procedure adopted by the manufacturer and the job worker, two show cause notices bearing No.39/04 dated 05.10.2014 were issued to both of them, proposing to declare the job work challans as ineligible for availment of Cenvat Credit and also proposing to impose penalty upon the manufacturer.

6. By a common order in original dated 20.5.2005, the Commissioner confirmed the proposals. The appeals filed by the manufacturer and the job worker having been allowed by the Tribunal, the Department is on appeal before us.

7. The appeal is admitted on the following questions of law:

> (i) Whether the Hon'ble CESTAT, Chennai was correct in setting aside the impugned order of the original adjudicating authority without considering the irregular credit taken by the first respondent (M/s. SPIPL) based on invalid invoices as against the provisions of Cenvat Credit Rules and without considering the penal consequences involved in the case? and
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> (ii) Whether either the manufacturer "M/s. HMIL" or the job worker "M/s. SPIPL" was entitled for Cenvat Credit either under Rule 3(4) read with 3(5) or under Rule 4(5) of Cenvat Credit Rules?

8. As rightly pointed out by the Tribunal, there is no dispute that the amount paid by the manufacturer on capital goods sent to the job worker, was duty. As a consequence, a recipient of the goods was entitled to avail the duty paid as credit. However, the entitlement under Rule 4(5)(a) is restricted only to a period of 180 days. Since the job worker did not return it within the period stipulated, the manufacturer reversed the Cenvat credit and raised revised invoices upon the job worker. The Tribunal thought there was nothing wrong.

9. Even on admitted facts, the fact remains that duty has been paid and the Cenvat Credit is claimed only once. Therefore, the twin components that are required to be satisfied are satisfied in this case. Hence, we find nothing wrong with the order of the Tribunal. Therefore, the questions of law are liable to be answered in favour of the respondents. Accordingly, the appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kpl

To

The Commissioner of Central Excise
Chennai IV Commissionerate
692, MHU Complex, Nandanam
Chennai 600 035.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.13890
+1cc to Mr.K.Magesh, Advocate, S.R.No.14039

C.M.A Nos.2128 & 2129 of 2010

UG(CO)
CA(01/06/2016)