IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

C.M.A.No.1729 of 2015

M/s.MM Forgings Limited,
Erasanaickanpatti,
Plant-2,
Viralimalai-621 316,
Tamil Nadu ... Appellant

-Vs-

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
No.26, Shastri Bhavan Annexe Building,
Haddows Road, Chennai-600 006.

2.The Commissioner of Central Excise & Service Tax,
No.1, Williams Road,
Cantonment,
Tiruchirapalli-620 001. ... Respondents

Civil Miscellaneous Appeal filed under Section 35G(2) of Central Excise Act, 1944 to set aside the impugned final order No.40058/2015 dated 21.01.2005 passed by the Customs, Excise and Service Tax Appellate Tribunal, South Zonal Bench, Chennai - 600006, against the Order of the Commissioner of Central Excise (Appeals), Trichy, dated 17.12.2004 in Order in Appeal No. 78/04 (TRY)(ADK), against the Order of the Assistant Commissioner of Central Excise II, Trichy, dated 13.09.2004 in order in Original No.24 of 2004.

For Petitioner : Mr.S.Murugappan

For Respondents : Mr.A.P.Srinivas

JUDGMENT

1. This is an appeal filed by the Assessee, against the order of the Customs, Excise and Service Tax Appellate Tribunal (in short, 'the Tribunal') dated 21.01.2015.

2. The Assessee is aggrieved by the fact that while it had claimed the refund of unutilized CENVAT credit, amounting to Rs.40,26,692/-, the authorities below sanctioned the refund, only to the extent of Rs.39,19,239/-. Thus, in effect, the authorities below excised the refund claim to the extent of Rs.77,453/-.

3. To be noted, the Assessee has claimed the refund, in terms of Rule 5 of the CENVAT Credit Rules, 2002 (in short, 'the 2002 Rules') read with Notification No. 11/2002-Central Excise (N.T.) dated 1.3.2002 (in short, 'the 2002 notification'). The said notification, in terms of Rule 5 of the 2002 Rules, provides for safe guards, conditions and limitations, for availment of refund of CENVAT credit of specified duty, allowed in respect of inputs, used in or in relation to manufacture of final products, which are cleared for export under a bond. The Revenue declined refund, as indicated above, for the entire amount claimed, based on the stand taken in paragraph 4 of the show cause notice dated 28.9.2004, (in short, 'SCN') issued to the Assessee. In paragraph 4 of the SCN, the Revenue has set forth the calculations, inter alia, pertaining to the amount of unutilized credit lying in the assessee's CENVAT credit account. Pertinently, these calculations also form part of paragraph 4 of the impugned Judgment, passed by the Tribunal.

3.1. For the sake of convenience, the said calculations are extracted hereafter:

1) Opening balance of credit as on 01.10.2003
Rs.1,50,28,581/-

2) Credit taken during 01.10.2003 to 31.12.2003
Rs.1,17,94,935/-

3) Total Cenvat Credit available
Rs.2,68,23,516/-

4) Debits during the period from 01.10.2003 to 31.12.2003

a) Debits for payment of duty
Rs.1,05,32,840/-

b) Debits expunged for refund of Rs.24,24,071
Rs.1,29,56,911/-

5) Closing balance of Cenvat credit as on 31.12.2003 Rs.1,38,66,605/-

6) (a) Amount of input credit involved in the Physical stock of raw materials as on 31.12.03 (27,37,760 kgs. @ 3.54/kg.) Rs. 96,91,670/-

(b) Credit involved on inputs contained in Finished goods NIL

(c) Credit involved on inputs contained in Finished goods (63756 x Rs.3.54) Rs. 2,25,696/-

Sub Total 6 (a+b+c) Rs. 99,17,366/-

7) Credit remaining unutilized Rs.39,49,239/-

8) Refund claimed Rs. 40,26,692/-

4. The Assessee claims that the CENVAT credit available in its account as on 31.12.2003, which is the date in which the quarter in issue ends, is a sum of Rs.1,38,66,605/-.

4.1. As against this, the Revenue claims that the credit, which is unutilised and is available for payment of refund, is only a sum of Rs.39,49,239/-.

4.2. The difference in the stands taken, as would be evident from the calculations set out above, emnated from the entries made against seriatim 6(a) and 6(c). The Revenue has adjusted against the closing balance in the CENVAT credit account, as on 31.12.2003, which is the sum of Rs.1,38,66,605/-, the amounts available as input credit against raw materials lying in stock as on 31.12.2003, and the input credit, which is relatable to finished goods available on the same date, i.e., 31.12.2003. Thus, the Revenue has adjusted two sums i.e., Rs.96,91,670/- and Rs.2,25,696/- against the closing balance in the CENVAT credit, available as on 31.12.2003 i.e., against the sum of Rs.1,38,66,605/-. It is on account of this adjustment that the Revenue has reached the conclusion that the unutilised credit available in the Assessee's CENVAT credit account is only a sum of Rs.39,49,239/-. Furthermore, it was for this precise reason that the assessee was, as indicated above, issued SCN dated 28.9.2004, which was confirmed by the order-in-original, dated 13.09.2004.

4.3. The record shows that the assessee failed in advancing its point of view both before the First Appellate Authority as well as before the Second Appellate Authority, i.e, the Tribunal. The First Appellate Authority, i.e., the Commissioner of Central Excise (Appeals), dismissed the Assessee's appeal vide order 17.12.2004 and as alluded to above, the Tribunal dismissed the second appeal as well, on 21.1.2015.

5. Mr.Murugappan, who appears on behalf of the Assessee, says that the Revenue is not entitled to adjust the input credit, which is attributable to raw material and/or finished goods lying in stock, as the methodology so employed is beyond the scope of Rule 5 of 2002 Rules and the 2002 notification.

6. On the other hand, Mr.Srinivas, the learned counsel for the Revenue, says that the adjustment made with regard to input credit available qua raw material and finished goods lying in stock, is tenable. It is submitted that after the said adjustment is made and, only if, there is credit available can refund be made in favour of the assessee, albeit, to the extent

of the credit available. It is thus, the submission of the learned counsel that since, unutilised credit, to the extent of Rs.39,49,239/- was available, the refund had to be restricted to the said amount.

7. We have heard the learned counsel for the parties and perused the records.

8. According to us, the authorities below have committed an error in as much as in adjusting the input credit qua stock of raw materials and finished goods, available as on 31.12.2003. As is evident from the record, the period in issue is a quarter beginning from 01.10.2003 and ending on 31.12.2013. The Assessee is entitled to claim refund of unutilised credit in terms of Rule 5 of 2002 Rules read with 2002 notification against the amount standing to its credit in the CENVAT credit account. There is nothing either in the Rule i.e., Rule 5 of the 2002 Rules or the 2002 notification, which provides for safe guards, conditions and the limitations which would have us conclude that the Revenue could have made the aforementioned adjustments against the closing balance reflected in the Assessee's CENVAT credit account.

9. In our view, the methodology followed by the Revenue is not in consonance, either with the Rules or the notification and therefore, such adjustment ought not to have been made. We are, therefore, in agreement with the submissions made on behalf of the Assessee. The impugned Judgment is thus, set aside. The assessee would be refunded the balance amount, equivalent to Rs.77,453/-.

10. The appeal is disposed of in the aforesaid terms. However, there shall be no order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kuaAND

To

1.The Customs, Excise and Service Tax Appellate Tribunal,
South Zonal Bench,
No.26, Shastri Bhavan Annexe Building,
Haddows Road, Chennai-600 006.

2.The Commissioner of Central Excise & Service Tax,
No.1, Williams Road,
Cantonment,
Tiruchirapalli-620 001.

3.The Assistant Commissioner of Central Excise,
Central Excise II, Division 'A' Wing,
III Floor, No.1, Williams Road,
Cantonment, Trichy - 620 003.

+1cc to Mr.S.Murugappan, Advocate, S.R.No.40593
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.40854

KGK(CO)
CA(03/07/2017)