IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO. 284 OF 2016

Wipro Enterprises Pvt. Ltd. ..Appellant
versus
The Commissioner of Central Excise, Nashik ..Respondent

Ms Anjali Hirawat with Mr. Jas Sanghvi i/b. PDS Legal for Appellant.
Mr. M. Dwivedi for Respondent.

CORAM: S. C. DHARMADHIKARI &
SMT. BHARATI HARISH DANGRE, JJ.

DATE : 23RD JANUARY, 2018

P. C. :

1] By the oder under appeal dated 17th March 2016 the imposition of the penalty on the appellant assessee is upheld.

2] The concurrent findings are rendered so as to justify imposition of penalty. Despite the Cenvat Credit Rules 2004 being clear, the assessee before us had indulged in acts which could not be termed as inadvertent. The Tribunal concluded that the assessee was aware of the provisions of law and the circumstances and conditions in which it could avail of the input credit. Despite this clear knowledge and the law being unambiguous, the assessee contested penalty. The penalty was contested on the ground that even prior to the show cause notice could be issued the credit wrongly availed of was reversed and the duty as also interest was paid. The penalty should be waived.

3] The Tribunal in maintaining concurrent orders, namely, that of the Adjudicating Authority and the Commissioner (Appeals) held that the appellants are very well conversant with the process and that is clear from paragraph 2 of the memo of appeal. Every time the inputs are cleared as such the appellant assessee is required to make invoice and the invoice contains the column where the duty reversed is to be mentioned. It is not something which can slip out of mind inadvertently. That is why the explanation that the other unit to which material was transferred could not have benefited by taking the credit of the said duty was rejected. Once the finding was that the short payment was for reasons of fraud, collusion or any mis-statement or suppression of facts particularly suppression which is apparent in this case then the Tribunal did not allow the appellant to canvass an argument that Rule 15(2) of the Cenvat Credit Rules 2004 is inapplicable. We see no perversity or error of law apparent on the face of the record in the reasoning of the Tribunal. The concurrent findings of fact are consistent with the material placed on record.

4] The counsel appearing on behalf of the appellant would rely upon the order of the Tribunal rendered in the case of *LG Electronics Pvt. Ltd. vs. Commissioner of Central Excise, Pune - III [2010 (255) Excise Law Times page 135*]. There the show cause notice was issued in order to recover short payment of Special Additional Duty and Countervailing Duty. The Tribunal held that in such case and in the facts peculiar to that assessee, Rule 15 had no applicability. For the reasons that the Tribunal sets out in this order and particularly in paragraph 5, it would be apparent that in cases and as clear as spelt out by sub Rule (2) of Rule 15 imposition of penalty follows. Once the finding of fact is, as noted above, then this order of the Tribunal has no application.

5] We are therefore unable to agree with the counsel that this appeal raises any substantial questions of law. We find that it is devoid of merits and the imposition of equivalent or commensurate penalty cannot be said to be illegal or perverse. The appeal is dismissed. No costs.

(SMT. BHARATI H. DANGRE, J.) (S. C. DHARMADHIKARI, J.)

Chandka