IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2019

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

Writ Petition No.21468 of 2007
& M.P.No.1 of 2007

Commissioner of Central Excise
Goubert Avenue, Beach Road,
Pondicherry. ...Petitioner

Vs

1. Settlement Commission (Cus. & C.Ex.)
Additional Bench, Narmada Block (II Floor)
Custom House, Chennai – 600 001.

2. M/s.Sri Saarbati Steel Tubes Ltd.,
Sedarpet Industrial Estate, Sedarpet,
Pondicherry – 605 111 ... Respondents

Prayer: PETITION filed under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records relating to the Final Order No.13/2007 dated 16.04.2007 in C.No.V/15/112/2005-SC on the file of the 1st respondent and quash the same.

For Petitioners : Mr.V.Sundareswaran
Senior Panel Counsel

For Respondents : Mr.T.Ramesh - R2

ORDER

The petitioner before me is the Commissioner of Central Excise, Pondicherry and the challenge is to the final order passed by the Settlement Commission (SC) dated 16.04.2007.

2. The assessee is arrayed as second respondent (R2). R2 had approached the SC for settlement of an issue that arose after issue of show cause notice dated 08.02.2005 seeking recovery of duty of a sum of Rs.2,01,42,532/- along with education cess. The demand, according to the Revenue, constituted differential duty, payable on job work charges.

3. During the pendency of the Settlement Application, the SC permitted the Revenue, by its order dated 02.12.2005, to undertake a verification of the Cenvat Credit that had been availed by the petitioner. Pursuant thereto, the Assistant

Commissioner, Central Excise called upon R2 to submit the following details for verification of the Cenvat Credit claimed:

1. All the invoices on which credit have been taken for the period 2002, 2003 and 2004 as per ER1 return.
2. Detailed work sheet of the credit taken during the above said period.
3. RG 23A/RG23 C Register
4. Invoice copies on which the credit of Rs.1,64,45,409/- and a Cess of Rs.60,992/- have been taken along with copies of LR and Goods Receipt Notes in a detailed work sheet.

4. In response, the petitioner, under cover of letter dated 02.01.2006, furnished the details called for. However, instead of submitting a report in that regard to the SC as called for by it, the Officer proceeded to issue a Show Cause Notice dated 25.01.2006 proposing to deny Cenvat Credit to an extent of Rs.1,64,45,609/- . This by itself, does not appear to be proper procedure seeing as the Application for settlement was pending before the SC and the limited exercise of verifying the correctness or otherwise of the credit has been referred as an interim measure by the SC. In my view, it would thus have been appropriate for the Revenue to file a report in compliance of the direction of the SC rather than rushing to issue a show cause notice. Be that as it may, such show cause notice came to be issued.

5. R2 thereafter filed an interim application before the SC bringing to its notice such show cause notice and the Revenue, vide Miscellaneous Application, in S.A.(E) No.12 of 2005, urged the SC not to entertain the assessees' claim regarding Cenvat Credit on the tenuous ground that adjudication regarding the claim of Cenvat Credit was pending before the Departmental authorities.

6. The request of the petitioner as well as the Miscellaneous Application of the Revenue came to be considered in an order of admission passed on 18.07.2006, wherein, after narrating the entire sequence of events, the SC states as follows:

> 'The Bench has gone through the records of the case carefully including the submissions made in the application and those urged by both parties during the different spells of hearings. The Bench observes that the entire issue revolves round the difference in the differential duty, which arose due to incorrect determination of the value and, consequently, payment of duty, as the applicant company was doing job work for

different suppliers. It was difficult to arrive at the correct assessable value as the transactions passed through 2-3 hands and the applicant had difficulty in correlating their activities for arriving at the correct duty liability. In other words, there were no established linkages for arriving at the correct duty liability. However, the Bench observes that regarding the question of eligibility of Cenvat credit of 1,64,45,609/- and Cess of Rs.60,992/-. It is on record that the delivery challans issued by GPIL discloses all the informations regarding duty payment particulars for the goods sent under the challans. It is also noted by the Bench that the manufacturers and the suppliers of the raw materials, M/s.GIPL, are within the jurisdiction of the same respondent Commissioner. Despite this, the Revenue, right from the beginning, have submitted that verification was not possible. The Bench, having scrutinized the abstract submitted by the applicant as well as the related documents issued by GPIL and BHS, notes that the delivery challans disclose all information regarding duty payment particulars for the goods sent under the challans. Out of the total duty demand of Rs.2,01,42,532/-, the applicant admitted a duty liability of Rs.1,86,88,744/- and they have paid Rs.1,83,23,978/-. The balance admitted duty liability to be paid is Rs.3,64,766/-. Since the applicant satisfy the conditions laid down for admission, the Bench admits the application, in terms of sub-section (1) of Section 32 F of the Central Excise Act, 1944, and directs the applicant to pay the balance amount of Rs.3,64,766/- within 30 days from date of receipt of this order. The Revenue is contesting the Cenvat credit which, according to them, has been wrongly availed. This aspect can be gone into at the time of final hearing, by which time, the Revenue should complete all verification in relation to the documents supplied by the applicant and prepare fully.

10. with the passing of this order, this Bench of the Commission shall have exclusive jurisdiction, in terms of sub-section 2 of Section 32 I of the Central Excise Act, 1944, to exercise the powers, and perform the functions, of any Central Excise Officer under this Act so far as this case is concerned.'

7. This order of the SC remains unchallenged till date and, in my considered view, sets out the correct position of law as regards the supplementary proceedings that were interjected by the Revenue even while the main Application was pending before the SC. The SC has rightly stated that since the Revenue was contesting the availment of Cenvat Credit, this aspect would be gone into again at the time of final hearing, by which time, the Revenue was permitted to complete its verification in regard to that issue in full. Admittedly, the Department has not made any further verification on this score thereafter and the Settlement Application came to be taken up for final hearing after recording compliance of the petitioner in regard to the payment of the balance of the additional duty offered.

8. In the final order, the SC goes into the question of availment of, availability and utilisation of the Cenvat Credit in full. I extract the relevant part of the order, specifically to emphasise that the order of the SC has noticed all relevant details, both factual as well as legal, and has arrived at the conclusion thereafter:-

> 'We have considered the submissions on either side. The applicants were doing job work on the raw materials supplied by the principal manufactures. The department issued the Show Cause Notice seeking to include the value of the raw materials for the purpose of payment of duty. The applicants have not disputed this basic premise. According to them, while paying duty on the value inclusive of raw material value, they were eligible to take Cenvat Credit of the duty paid on the raw material. The Revenue has taken the view that the documents produced for the purpose of taking credit of duty paid on raw materials were not in accordance with Cenvat Credit Rules. However, on examination of the details of the case, we find that there was no dispute regarding the receipt of the goods in the factory and their utilization. The department has also not disputed the duty paid nature of the goods. The movement of the raw materials to the factory, and the movement of the finished goods from the factory to the raw material suppliers have not been disputed. Further, the department also suspected the genuineness of the documents under which M/s.Bombay Hardware Private Limited and Bombay Hardware Syndicate have supplied the raw materials. The department has finally accepted that in respect of supplies made from M/s.Ganges International P. Ltd., the duty paid nature of

the goods has been established. In respect of the goods supplied by M/s.Bombay Hardware Syndicate, the department has merely raised certain doubts that the duty paying documents might have been fabricated. Apart from merely raising doubt, no documentary or other evidence has been brought on record to prove these doubts. In respect of certain invoices, the applicants themselves have conceded that they were not eligible for the credit, other than that, there is no evidence to indicate that the raw materials were not duty paid. In view of this, we are not able to subscribe to the over enthusiasm of the Revenue to deny the credit despite the documentary and other evidence produced by the applicants in support of their claim for the credit. Therefore, the notice No.3/06 dated 25.01.2006 issued by the Jurisdictional Commissioner, the subject matter of which is part and parcel of this Settlement proceedings cannot subsist.

8.Further, as submitted by the advocate, Rule 7 (1 A) of the Cenvat Credit Rules is clearly in favour of the applicants. It is enough if the details of payment of duty, description of the goods, assessable value and address of the factory are available in the documents produced. In other words, the statutory provisions are liberal enough to enable the applicants to avail the credit. As there is no doubt about the duty paid nature of the raw materials used by the applicant company and in view of the liberal provision of the Rules, we have no doubt that the applicants are eligible for the credit.'

9. Upon a perusal of the final order passed, I have no doubt that the issue has been considered in proper perspective by the SC.

10. The SC, while admitting the Application, on 18.07.2006, permitted the Department to undertake further verification in regard to availability and utilisation of Cenvat Credit if necessary. The Department has admittedly not chosen to undertake any further verification.

11. At the time of final hearing, reliance was placed merely on the show cause notice issued even prior to the admission order. Even before me Mr.Sundareswaran only refers to the verification that was undertaken prior to the order of admission order. This order, in my view, constitutes prima facie

acceptance of the availment of the Credit in respect of which all factual details have been placed by the petitioner before the Department and cannot be considered again seeing as it is an issue considered already by the SC in order dated 18.07.2006. Any challenge to the final order of the SC can, in my view, be only on the basis of material that has come to its notice after 18.07.2006, which is not the case before me.

12. Moreover, the provisions of Rule 7 of the Cenvat Credit Rules support the case of the petitioner on merits and are extracted below.

> 'Rule 7. Documents and accounts:- .....
>
> (1A) CENVAT credit under rule 3 shall not be denied on the grounds that any of the documents mentioned in sub-rule (1) does not contain all the particulars required to be contained therein under these rules, if such document contains details of payment of duty, description of the goods, assessable value, name and address of the factory or warehouse:'

13. The provisions of Rule 7(1A) permit the availment of Cenvat Credit upon production of the primary details in relation to the transaction from which the claim arises. In the present case, both the Officer as well as the SC have looked into the aspect of Cenvat Credit in the light of the primary details made available by the petitioner and the SC has rendered a finding of fact and satisfaction in this regard. No perversity is shown to exist in such finding of fact.

14. In such circumstances, I am of the considered view that this Writ petition has no merit and dismiss the same. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-VI)

//True copy//

Sub Assistant Registrar

sl

To

1. Settlement Commission (Cus. & C.Ex.)
Additional Bench, Narmada Block (II Floor)
Custom House, Chennai - 600 001.

2. Commissioner of Central Excise
Goubert Avenue, Beach Road,
Pondicherry.

+1cc to Mr.T.Ramesh , Advocate SR.No.81342

+1cc to Mr.V.Sundareswaran, Advocate SR.No.82032

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SSV(CO)
GMY(30/01/2020)