IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-99-2011
Date of Decision:-21.02.2023

M/s Showa India Pvt. Ltd. ….Appellant

Vs.

Union of India and anr. ….Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amar Partap Singh, Advocate
for the appellant.

Mr. Tejinder Joshi, Sr. Standing counsel
for the respondents.

Ritu Bahri, J.

1. The instant appeal has been filed under Section 35 G of the Central Excise Act, 1944 (for short 'Act 1944') seeking setting aside of order dated 14.07.2011 (A-6) passed by Customs, Excise and Services Tax Appellate Tribunal, New Delhi whereby CENVAT Credit amounting to Rs.63,32,281/- as claimed against 5 invoices, was disallowed to the appellant-Company.

2. Brief facts relevant for the purpose of disposal of the present appeal are that appellant-Company is engaged in the manufacture of automobile parts falling under Chapter 87 of the first schedule to the Central Excise Tarrif Act, 1985 (for short 'Act 1985'), previously known as M/s Evergreen Autocomp (India) Pvt. Ltd. The appellant got registered with the Central Excise Department on 28.11.2006. It had set up new factory and for construction of factory building, it awarded a contract to construction company M/s Taisei Corporation. The appellant

had availed Cenvat Credit amounting to Rs.1,27,17,506/- on service tax paid on construction service on the strength of 12 invoices issued by the Contractor M/s Taisei Corporation. 5 out of 12 invoices involving Cenvat Credit of Rs.63,32,281/- were issued prior to 28.11.2006 i.e prior to registration of the appellant with the Central Excise Department and the remaining 07 were issued after 28.11.2006.

3. On 26.02.2009, a show cause notice (A-1) was issued by Commissioner of Central Excise, Faridabad proposing to disallow Cenvat Credit amounting to Rs.1,27,17,506/- availed by the appellant on the input service availed during the period i.e 2007-2008 on the ground that the appellant was not registered with the Central Excise Department prior to 28.11.2006 and penalty was also proposed to be levied upon the appellant under Rule 15 and interest under Rule 14 of the 'Rules 2004'.

4. Thereafter, a reply dated 25.03.2009 (A-2) was submitted by the appellant to the above show cause notice. However, the demand of Rs.63,32,281/- was confirmed by the Commissioner, Central Excise, Faridabad, vide Order-in-Original on 30.09.2009 (A-4) denying the Cenvat credit on five invoices issued prior to 28.11.2006. Feeling aggrieved against this order, an appeal was filed by the appellant before the Tribunal on 21.12.2009 (A-5), which too was dismissed, vide order dated 14.07.2011 (A-6). Now the present appeal has been filed by the appellant challenging order dated 14.07.2011 on the ground that it was established by the appellant that it had paid an amount of Rs.29,27,51,199/- to the Contractor for construction of its factory building and service tax of Rs.1,27,17,511/- has been paid by the Contractor on the same. The services provided to the contractor qualified to be an input service for the appellant and it had been used in or in relation to the manufacture of final dutiable products. The authorities below further failed to consider this fact and committed serious error in rejecting the

prayer of the appellant. It has been stated that there is no requirement of registration as registration is not a pre-requisite for availing CENVAT Credit. Further it was also proved that the demand as raised by the respondent was time barred and the revenue had not produced any material on record to prove that it could invoke the extended period of limitation. Hence it was submitted that the impugned order passed by the Tribunal was liable to be set aside and the appeal deserves to be allowed by allowing CENVAT Credit to the tune of Rs. Rs.63,32,281/- as claimed against 5 invoices along with interest.

5. In support of its claim, learned counsel for the appellant has placed reliance upon the authority cited as ***MPORTAL India Wireless Solutions Pvt Ltd v. CST, Bangalore reported at 2012 (27) STR 134 (Kar.)*** wherein it was held that there was no provision in the Cevnat Credit Rules imposing the condition of prior registration for availing cenvat credit and in the absence of such statutory provision the assessee is entitled to refund of cenvat credit.

6. The above judgment was followed in the judgment i.e ***Principal Commissioner of Central Tax, Bangalore East vs. Huawei Technology India Pvt Ltd. reported at 2022 (60) GSTL 24 (Kar.)*** wherein it was observed that the benefit of refund of credit cannot be denied on the ground that the assessee was not registered.

7. Reference has further been made to judgment of Hon'ble Supreme Court in the case of ***Pushpam Pharmaceuticals Co. vs. CCE, Bombay, 1995 (78) ELT 401 (SC)***, wherein it has been held that if the department is already aware of the entire facts then the allegation of suppression and concealment is misconceived and extended period of limitation of 5 years cannot be invoked.

8. Per contra, learned senior Standing counsel appearing for the respondent has argued that there was no infirmity in the order passed by the

Tribunal. The appellant was not registered with the Central Excise Department till 28.11.2006 and therefore, the appellant could not be considered to be in existence till that date. The cenvat credit claimed by it prior to that period, could not be granted and thus, the present appeal is being devoid of any merit and deserves to be dismissed.

9. We have heard learned counsel for the parties at considerable length have give due deliberation to the contentions raised by them.

10. Mr. Joshi, learned senior standing counsel has failed to cite any provision of law which provides the condition for prior registration of the company for claiming Cenvat Credit. It is not the case of the respondent that the appellant had not incurred money to set up its factory for manufacturing of automobile parts. The denial of Cenvat Credit on technical ground is unsustainable and it would be travesty of justice. The appellant was denied Cenvat Credit only on the technical ground that it was not registered at the relevant time. No such provision of law has been cited by learned counsel for the respondent to show that the appellant was not liable for claiming of Cenvat Credit on the ground that it was not registered prior to 28.11.2006.

11. We are of the considered opinion that the benefit of Cenvat Credit could not be declined to the appellant only due to the reason that it was not registered with the Central Excise Department till 28.11.2006.

12. It is not in dispute that the appellant was previously known by the name of M/s Evergreen Autocomp (India) Pvt. Ltd. It is also not in dispute that the factory of the appellant was being set up from the year 2006 onwards. Undoubtedly, the same was registered only on 28.11.2006. The impugned order is thus not sustainable in the eyes of law. More so, no sufficient explanation whatsoever had been rendered by the Tribunal for holding that that case for issuing

show cause notice after the extended period of limitation of 05 years, as required under Section 11A of the Act 1944, had been made out.

13. In view of the discussion made above, the present appeal is allowed and order dated 14.07.2011 (A-6) is set aside. The appellant is entitled to avail Cenvat Credit amounting to Rs.63,32,281/- as claimed against 5 invoices, which were issued prior to 28.11.2006. This payment shall be made to the appellant along with interest @ 6% per annum for the date when it became payable.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

21.02.2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No