HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-9-2017 (O&M)
Reserved on: 09.10.2023
Pronounced on: 13.10.2023

Commissioner of Central Excise Commissionerate Gurgaon-II ....Appellant

Vs.

M/s. AGR Steel Strips Pvt. Ltd. ....Respondent

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

Present: Mr. Sourabh Goel, Advocate for the appellant.

Mr. Amrinder Singh, Advocate for the respondent.

****

Ritu Bahri, J.

1. The revenue has come up in appeal against the order dated 21.08.2014 (Annexure A-1) passed by Customs, Excise and Service Tax Appellate Tribunal, New Delhi (in short 'the Tribunal') whereby appeal filed by the respondent-M/s. AGR Steel Strips Pvt. Ltd against order dated 21.01.2023 (Annexure A-7) passed by the Commissioner of Central Excise Delhi-III, Commissionerate, Gurgaon imposing recovery of inadmissible CENVAT Credit of Rs.43,55,22,721- (including Edu. Cess and HSE Cess) (Rs. Forty Three Crores Fifty Five Lakhs Twenty Two Thousand Seven Hundred Twenty One Only) under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(1) of Central Excise Act, 1944 alongwith interest, has been allowed.

2. As per the order dated 21.08.2017 (Annexure A-1), the short issue involved in that appeal was as to **whether the appellant was entitled to avail the credit of duty paid by the input supplier or the credit so availed had to be denied to him on the ground that the activity as the**

input supplier end was a non-manufacturing activity and thus the input supplier should not have paid the duty.

3. In the facts of the present case, there is no dispute that the input supplier had paid the duty. The assessee had purchased the raw material i.e. HR slit & pickled sheets weighing 22539-755 M.Ts from M/s. Asian Colour Coated Ispat Ltd. Bawal, District Rewari. The supplier had paid the duty and on this duty, the respondent-assessee availed Cenvat credit and utilized the same towards payment of central excise duty on the goods manufactured and cleared by him. The question before the Tribunal was that even if input supplier was not required to pay any duty and it was actually paid by the input supplier, would the recipient i.e. assessee would be entitled to credit of the same? The assessee had availed the benefit of Cenvat credit of Rs. Rs.43,55,22,721- for the period December, 2004 to March, 2012 and this amount was sought to be recovered by issuing show cause notices under Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A (1) of the Central Excise Act, 1944.

4. Reference at this stage can be made to the decision given by the Division Bench of Delhi High Court in the case of ***Faridabad Iron & Steel Traders Association vs. Union of India 2003 SCC OnLine Del 1300,*** decided on 21.11.2003. The Division Bench was examining the circular dated 07.09.2001 which was challenged by the Iron & Steel Traders Association who were the job workers and engaged in cutting and slitting of steel sheets from coils. As per the said circular, the process of cutting of HR/CR coils of iron of non-alloy steel into sheets or slitting into strips of lesser width; or slitting of sheets into strips would amount to manufacture. The Division Bench quashed the said circular holding that this process would not amount to manufacture by giving the detailed judgment. The said

judgment of Delhi High Court was upheld by Hon'ble Supreme Court by dismissing Special Leave to Appeal (Civil) No. CC 5085 of 2004 with SLP (C) No. CC 5231 of 2004 filed by Union of India, on 13.07.2004.

5. After the Division Bench judgment of the Delhi High Court in ***Faridabad Iron & Steel Traders Association's case (supra)***, it was held that the process of **cutting of HR/CR coils of iron of non-alloy steel into sheets or slitting into strips of lesser width; or slitting of sheets into strips would not amount to manufacture**. Thereafter, the circular dated 02.03.2005 was issued withdrawing the circular dated 07.09.2001.

6. In the facts of the present case, the input supplier of recipient assessee had paid the duty at the time of clearance of such HR coils as per the cenvatable invoice and on the basis of such duty paid, the respondent availed the benefit of Cenvat credit. In these circumstances, **the issue to be examined is that if the Department accepts the declaration and duty, then can the Cenvat credit be given to the purchaser who otherwise fulfills all the conditions for availing Cenvat credit?**

7. In the present case, pursuant to order dated 26.09.2017 passed by this Court, following circulars of the Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, Government of India, New Delhi were placed on record:-

1. Circular No. 811/8/2005-CX dated 02.03.2005 whereby circular dated 07.09.2001 has been withdrawn,
2. Circular No. 584/21/2001-CX dated 07.09.2001 which has been set aside by the Division Bench of the Delhi High Court.
3. Other clarificatory circular No. 927/17/2010-CX dated 24.06.2010 wherein again it has been clarified that process of oiling and pickling as preparatory steps do not amount to

manufacture.

8. Learned counsel for the respondent has also referred to a judgment passed by Gujarat High Court in ***Commissioner of C. Ex., Ahmedabad-III vs. Nahar Granities Ltd. 2014 (305) E.L.T. 9 (Guj.).*** In that case, Gujarat High Court was examining the case where the assessee had purchased the inputs and utilized the same for manufacture of final product. The inputs were duty paid. Hence, Rules 3 and 4 would enable the assessee/purchaser to avail the Cenvat Credit even if supplier of inputs had paid excise duty under mistaken belief. Since the Department had accepted the declaration and duty, Cenvat credit on that such duty cannot be declined to the purchaser of the goods who otherwise fulfilled all the conditions for availing Cenvat credit.

9. Similar view was taken by the Division Bench of this Court in ***Commissioner of C. Ex., Delhi-III vs. Neel Metal Products Ltd. 2009 (237) E.L.T. 270 (P&H)***. In the said case, the Division Bench was examining the circular dated 02.03.2005 whereby circular dated 07.09.2001 had been withdrawn. The Division Bench held that the goods were manufactured prior to 02.03.2005, and hence, the circular dated 02.03.2005 would not apply. While dismissing the appeal of the revenue, in para No. 7, the Division Bench observed as under:-

> "Having heard learned counsel for the appellant, we are of the view that the goods supplied to the assessee were covered under Chapter Heading No. 7318 and 7211 of the first schedule appended to the Act. The assessee could not have got the classification of the goods changed. The fact that the duty was paid on those inputs is evident from the invoices indicating the payment of duty for which credit has been taken. It appears

that the goods were manufactured prior to 2-3-2005 and the circular dated 2-3-2005 was not to apply in any case. The view taken by the Tribunal does not suffer from any legal infirmity warranting admission of the appeal because no question of law would arise. The matter seems to be covered in favour of the assessee by the judgment of Hon'ble the Supreme Court in the case of *Sarvesh Refractories (P) Ltd. (Supra)*. There is, thus no merit in the appeal. Dismissed."

10. The judgment referred to above has clarified that if the purchaser purchases inputs on which duty has already been paid, he has right to avail Cenvat credit as per Rules 3 and 4 of Cenvat Credit Rules, 2004. Even if the duty is not liable to be paid, but it has been accepted by the Department, benefit of Cenvat credit cannot be denied. Moreover, the judgment of Delhi High Court passed in ***Faridabad Iron & Steel Traders Association's case (supra)*** has attained finality and circular dated 07.09.2001 had been withdrawn.

11. In the present case, the Tribunal, vide order dated 21.08.2014 (Annexure A-1) has rightly allowed the appeal of the assessee by observing that even if the activity at the end of the input supplier has been held to be a non-manufacturing activity, the input recipient would be entitled to the credit of the duty so paid by the input manufacturer and rightly set aside the order dated 21.01.2013 passed by the Commissioner of Central Excise Delhi-III Commissionerate, Gurgaon, for recovery of inadmissible Cenvat Credit of Rs.43,55,22,721/- alongwith interest (Annexure A-7).

12. No substantial question of law arises for consideration. The present appeal is dismissed.

13. Pending application, if any, stands disposed of.

(RITU BAHRI)
JUDGE

13.10.2023
Divyanshi

(MANISHA BATRA)
JUDGE

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