IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.68 of 2019 (O&M)
Date of decision: 21.02.2023

Commissioner of Central Excise & Service Tax, Ludhiana
.....Appellant

Versus

M/s Nandan Autotech Ltd.
.....Respondents

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

Present: Mr. Sourabh Goel, Senior Standing Counsel,
for the appellant.

Mr. Sandeep Wadhawan, Advocate,
for the respondent.

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Ritu Bahri, J.

The instant appeal, under Section 35 (G) of the Central Excise Act, 1994, has been filed against the final order dated 14.03.2018 passed by the Customs, Excise and Service Tax Appellate Tribunal, Chandigarh in Appeal No.E/39/2009, whereby appeal filed by the respondent-assessee has been allowed and appeal of the appellant-revenue has been dismissed.

Brief facts of the case are that respondent-M/s Nandan Auto Tech Ltd. is a forging unit manufacturing alloy/non alloy steel forgings machined/un-machined flanges (pipe fittings) etc. Consequent upon an information that the respondent was availing Cenvat Credit on raw material and furnace oil etc. without actual receipt of the said inputs, the factory premises of the respondent was searched by DGCEI on 28.02.2003. During search, as per record seized, it was revealed that the goods worth Rs.58.11 Lakhs (raw materials and finished goods) were not accounted for in their record. A show cause notice for the seizure part was issued on 20.02.2004.

Thereafter, a show cause notice dated 12.07.2006 (Annexure A-1) was issued on the basis of search conducted and documents seized giving details of the Cenvat Credit taken on the basis of invoices issued by 12 suppliers and it was stated that the Cenvat Credit on the said goods had been taken and in most of the consignments, the goods were not found as per Information Collection Centres (ICCs). The premises of the transporters, who had purportedly transported the said goods, were searched on 14.12.2004. The investigations conducted in this regard had revealed that most of the transporters were either non-existent at the given address or they denied to have transported the said goods to the premises of the party. The details of consignments purported to have been transported by the above transporters were also not found entered in the records of ICCs.

Pursuant to the notice dated 12.07.2006 (Annexure A-1), the adjudicating authority, vide order dated 22.09.2008 (Annexure A-2), confirmed the demand of Rs.3,73,537/-, out of Rs.1,40,05,657/- of Cenvat Credit on FO/LDO. The rest of the demand was vacated on the following grounds:-

> "The SCN is based on assumptions and presumptions and no conclusive evidence has been adduced.
>
> The ICC records at best can be termed as corroborative evidence and not the conclusive evidence to prove non entry of goods in the State of Punjab."

Feeling aggrieved by the above said order, both the appellant-revenue and the respondent-assessee filed their respective appeals before the Tribunal. Finally, the Tribunal, vide order dated 14.03.2018 (Annexure A-3) allowed the appeal filed by the respondent-assessee and reduced the demand from Rs.3,73,537/- to Rs.1,01,048/-. However, the appeal filed by the department was dismissed. The revenue-department has now come up in appeal against the order dated 14.03.2018 (Annexure A-3) passed by the Tribunal.

Vide impugned order, the Tribunal has observed that M/s Nandan Auto Tech Ltd. had produced certificate issued by the Excise and Taxation Officer, Ludhiana, certifying that the assessee had received the material on each and every one of the disputed invoices. The department had not challenged the said certificate. Rather, the said certificate was verified by the Excise and Taxation Officer, Ludhiana, who had confirmed that the certificate was duly issued by the office on 10.01.2006. Keeping in view the above certificate, the Tribunal further observed that the assessee is entitled to avail Cenvat credit on the invoices in question. It was further observed that the main reason to deny the Cenvat credit to the assessee was that the transport vehicles had not entered at ICCs.

With regard to the appeal of the assessee, wherein Cenvat credit of Rs.97,139/- has been denied, it was observed that this benefit was denied on the basis of statement made by Kamal Gupta son of the owner of M/s Gupta Transporter Company, who had stated that he had never transported any material for LOTC. The assessee had sought cross-examination of Kamal Gupta, but the same was not granted to the assessee. In that circumstance, the statement made by Kamal Gupta was inconclusive and it could not be relied upon. So far as the demand of Rs.1,75,350/- is concerned, it has been observed that the said demand had been confirmed on the basis of statement made by G.C. Arya of M/s APPL. However, no cross-examination of G.C. Arya was granted to the assessee. Therefore, statement made by G.C. Arya had no relevance to deny Cenvat credit to the assessee. With these observations, demand of Rs.1,75,350/- was set aside. However, demand of Rs.1,01,048/- was confirmed on the ground that the vehicle, which had been mentioned in the invoices were not capable of transportation of goods in question, as the same were not tankers.

Learned counsel for the appellant has not been able to dispute the fact that the certificate was issued by the Excise and Taxation Officer, certifying that the assessee had received the material on each and every one of the disputed invoices. Once, such certificate had been issued, the benefit of Cenvat Credit cannot be denied to the assessee-respondent. Moreover, in para 3.70 of the order dated 22.09.2008 (Annexure A-2), the adjudicating authority has observed as under:-

> "3.70 There are infact, certain circumstantial evidences, which indicate that the noticee had indeed purchased and consumed FO/LDO. There is an assessment order by sales tax authorites certifying receipt of FO/LDO by the noticee. There is proof of payment through banking channels in lieu of purchase of FO/LDP. There are Central Excise records which are proof of production and its clearance on payment of Central Excise duty and proof of export of goods manufactured by the noticee. Production is not possible without the consumption of FO/LDO. Then there is a report by CBI, who after investigation concluded that thenoticee had manufactured goods and their export is genuine"

The above observations made by the adjudicating authority establishes that as per the investigation carried out by the CBI, the respondent had actually manufactured the goods and their export was genuine. Therefore, the respondent-assessee was entitled to claim Cenvat credit on the inputs of goods.

In view of the above discussion, no ground is made out to interfere in the impugned order as the same has been passed after appreciating the evidence in the right perspective. No substantial question of law arises for consideration in this appeal.

Resultantly, finding no merit, the present appeal is dismissed.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

21.02.2023
ajp

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