IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA-5-2020 (O&M)
Date of decision:- 25.01.2023

Commissioner of Central Excise ....Appellant

vs.

Good Year India Ltd ...Respondent

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

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

Mr. Ajay Aggarwal, Advocate and
Mr. Naveen Bindal, Advocate,
for the respondent-Company.

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Ritu Bahri, J.

CM-2744-CII-2020

For the reasons mentioned in the application, delay of 52 days in re-filing of the appeal is condoned.

The application stands disposed of.

C.E.A No. 5-2020

The present appeal has been filed under Section 35 G of the Central Excise Act, 1944 (for short 'Act 1961') seeking setting aside of order dated 20.02.2019 (A-3) passed by Customs, Excise and Services Tax Appellate Tribunal, Chandigarh Bench in E/2456/2009 filed by the appellant.

The case in brief is that the respondent-Company is a manufacturer of tyres under Chapter 40 of CETA, 1985. As per Rule 37 (b) of the Cenvat Credit Rules, 2004 (for short ‘Rules 2004’) , credit in respect of the Additional Duty of Excise leviable under Section 3 of the Additional

Duty of Excise (Goods of Special Importance) Act, 1985 (for short 'Act 1985') paid before 01.04.2000 shall be utilized towards payment of duty of excise leviable under the Act 1985 on any final product manufactured by manufacturers or for payment of such duty on inputs themselves if such inputs are removed as such or after being partially processed. During the period from 01.08.1997 to 01.06.1998, Additional Duty of Excise (GSI) was leviable on processing of tyre cord fabrics used within the factory. However, during the said period, the assessee have removed processed tyre cord fabrics without payment of duty resulting in short payment of Additional Excise Duty (GSI). Therefore, two demand show cause notice were issued to the respondent for recovery of duty amount, which was subsequently confirmed along with interest. The respondent debited the duty confirmed on account of AED (GSI) vide debit Entry No. 4058 dated 31.12.2004 in cenvat credit account. The entire credit of AED so availed was utilized by the respondent towards payment of the basic and special excise duty. It was viewed that in terms of Rule 3(4) of the Cenvat Credit Rules, 2004 readwith explanation attached to Rule 3(7)(b) of the Rules, the credit of the AED(GSI) paid on or after 01.04.2000 may be utilized towards payment of duty excise leviable under the first schedule or the second schedule of the Central Excise Tariff Act, 1985. The aforesaid provisions being prospective in effect, utilization of the credit of AED(GSI) accrued prior to 01.04.2000 towards payment of BED and SED appears to be incorrect. Therefore, utilization of cenvat credit amounting to Rs. 4,84,12,584/- towards payment of BED and SED on their final products appeared to be irregular in terms of Rule 3 (7)(b) of the Cenvat Credit Rules, 2004. Therefore, a show cause notice was issued to the respondent for recovery of the cenvat credit availed by the respondent alongwith interest and to impose penalty.

Vide order dated 24.03.2009 (A-2), Adjudicating Officer dropped the proceedings against the respondent. Against the said order, the revenue filed an appeal before the learned Tribunal and the appeal was dismissed on 20.02.2019 (A-3). Hence the present writ petition.

Learned counsel for the respondent submits that earlier decision given by this Court on 25.01.2007 has been upheld till Hon'ble the Supreme Court as no substantial question of law was there, which requires consideration. Reference has been made to Section 35 G of Central Excise Act which provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal on or after the 1st day of July, 2003 (not being an order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or to the value of goods for purposes of assessment), if the High Court is satisfied that the case involves a substantial question of law. The alternative remedy of appeal is subject to the satisfaction of the High Court that not only a question of law but a substantial question of law is involved.

Heard learned counsel for the parties at length.

At the very outset, reference can be made to order dated 24.03.2009 (A-2) wherein while dropping the proceedings against the respondent, observed as under:-

> "That in Budget 2003, Cenvat Credit Rules were amended to allow credit of ASD (GSI) for payment of Cenvat duty. Prior to 1st March, utilization of credit of AED (GSI) was restricted to payment of AED (GSI) only. The said amendment was carried out consequent to the deletion of Article 272 of the Constitution of India, vide Constitution (8th Amendment) Act, 2000 (sic) and the issuance of

> Constitution (Distribution of Revenue) No. 5 Order, 2000 dated 10.10.2000 by the President. As per this order, 1.5% of the total sharable taxes and duties are to be distributed to the states in lieu of AED (GSI) instead of the earlier system of AED (GSI) being distributed amongst the states as per the pattern recommended by the Second Finance Commission. Under the new dispension the requirement of separate accounting of the AED (GSI) no longer exists since 10.10.2000. As the reasons for the amendment to Cenvat Credit Rules exists even prior to 1st March, 2003, it was considered appropriate not to put any cap on the use of
> AED (GSI) credit accruing prior to 1.3.2003 in the said credit rules. It is accordingly clarified that credit of additional duty (GSI) accrued earlier (prior to 1.3.2003) can be used for payment of Cenvat duty as well as AED (GSI)."

Against the aforesaid orders of CESTATE, the department filed an appeal before this Court and the same was dismissed on 25.01.2007, vide CEA No. 140-2006 holding that we find no substantial question of law, warranting admission of the appeal would arise especially when the Central Board of Excise and Customs itself has issued a circular on 06.03.2003 which lend support to the case of the assessee. Even SLP filed against the order of this High Court was dismissed on 10.03.2008 on the ground of delay.

In the present case, the show cause notice dated 16.11.2005 was issued to the respondent-Company to show cause as to why:-

“(i) The whole of CENVAT credit of Rs.4,84,12,584/- should not be held as irregular and duty should not be demanded/recovered from them under Section 11A.

(ii) Interest should not be charged on such irregularity availed credit as stated above from the 1st day of the succeeding month in which the credit was taken as per Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1994

(iii) Penalty should not be imposed upon them under Rule 15 of the CENVAT Credit Rules, 2004 read with Section 38A of the Central Excise Act, 1944.

The proceedings initiated pursuant to the above mentioned show cause notice was dropped by the Adjudicating Officer, vide order dated 20.03.2009 (A-2). The department filed an appeal against the above said order before the Tribunal and the same was also dismissed, vide order dated 20.02.2019.The operative part of the order reads as under:-

7. Moreover, as per the explanation to Rule 3(7)(b) of Cenvat Credit Rules, 2004 which is expected herein below for ready reference:-

"Explanation - For the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special importance) Act, 1957 (58 of 1957) paid on or after the 1st day of April, 2000, may be utilised towards payment of duty of excise leviable under the First Schedule or the Second Schedule to the Excise Tariff Act."

8. We find that, it is fact on record, the appellant has paid AED(GSI) through debit entry on 31.12.2004 and the said explanation allowed the AED(GSI) paid on or after 01.04.2000 can be utilized towards payment of basic excise duty or special

> *excise duty. Therefore, the respondent is correctly availed the cenvat credit of AED(GSI) which has been used for payment of basic excise duty/special excise duty."*

In the facts of the present case, no substantial question of law arises for consideration as with respect to this very assessment, show cause notice has already been dropped by this Court on 25.01.2007 in CEA No. 140-2006 and even SLP filed against this order has also been dismissed.

In view of the above factual position, the present appeal stands dismissed.

(RITU BAHRI)
JUDGE

25.01.2023 **(MANISHA BATRA)**
G Arora **JUDGE**

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