IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.10 of 2020 (O&M)
Date of decision: 12.04.2023

The Principal Commissioner, Central Goods & Services Tax Commissionerate, Ludhiana

…Appellant

Vs.

M/s IOL Chemicals & Pharmaceuticals Ltd.

…Respondent

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

Present: Mr. Tajender K. Joshi, Senior Standing Counsel, for the appellant.

Mr. Sandeep Goyal, Advocate, for the respondent.

****

Ritu Bahri, J. (oral)

The instant appeal, under Section 35G of the Central Excise Act, 1944, has been filed for setting aside the final order dated 05.07.2018 (Annexure A-3) passed by the Customs, Excise & Service Tax Appellate Tribunal, Chandigarh (for short 'the Tribunal'), whereby appeal filed by the respondent has been allowed.

Before the Tribunal, respondent-IOL Chemicals and Pharmaceuticals Limited had filed an appeal against the order, wherein Cenvat credit on the steel items i.e. M.S. Plates, MS Sheets/Aluminium Coil, Joist/Square/joist Challen/HR Plates/Shapes & Sections/MS Channels, Angels, Welding electrodes CRSS Patti/HRSS Plates/HR Coil/Sheets etc.

were denied on the ground that those items were not capital goods in terms of Rule 2(a) of Cenvat Credit Rules, 2004, therefore, the respondent was not entitled to avail Cenvat credit on the said items for the period 15.05.2006 to 31.03.2010.

The Tribunal allowed the above said appeal by referring to the judgment passed by the larger bench of the Tribunal in ***Vandana Global Limited vs. CCE,Raipur,*** 2010 (253) ELT 440 (Tri.-LB), decided on 30.04.2010, wherein it was held that the Cenvat credit was not available to the appellant. However, the said decision was set aside by the Chhattisgarh High Court in 2011 (274) ELT A-78 (Chhattisgarh) and the benefit of Cenvat credit was allowed to the respondents with respect to the steel items by holding that the same were capital goods in terms of Rule 2(a) of Cenvat Credit Rules, 2004.

Learned counsel for the appellant has not been able to show any judgment, which has reversed the judgment of Chhattisgarh High Court. Rather, he has argued that the Tribunal has allowed the appeal on merits, however, the main issue before the Tribunal was, whether the revenue was correct in invoking the revisional power beyond limitation. He further argued that this aspect has not been considered and by referring to the judgment of Chhattisgarh High Court, the appeal of the respondent has been allowed. The main question before the Tribunal was, whether the show cause notice dated 03.06.2011 (Annexure A-1) was issued on availing the facility of Cenvat Credit in respect of duty paid on inputs as well as capital goods.

The assessee-respondent had availed the benefit of Cenvat credit from 15.05.2006 to 31.03.2010 amounting to Rs.2,49,21,545/-. The show cause notice dated 03.06.2011 (Annexure A-1) was issued by extending the period of limitation, under Section 11A of the Act, asking the respondent as to why:-

> (i) The Cenvat credit amounting to Rs.2,49,21,545/- (Rs.2,24,198,102/- BED, Cess of Rs.4,83,196/-, SHE of Rs.2,40,247/-) should not be disallowed and recovered from them under Rule 14 of the Rules read with Section 11A of the Act by invoking extended period of limitations as provided under first proviso to Section 11A of the Act and the amount of Rs.5,64,467/- already paid by them should not be adjusted towards the above amount;
>
> (ii) Interest in terms of Section 11AB of Central Excise Act, 1944 should not be recovered from them at the appropriate rate;
>
> (iii) Penal action under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Act should not be taken against them for contravention of aforesaid provisions."

The assessee submitted its reply to the show cause notice. The case was adjudicated by the Commissioner (erstwhile Central Excise Commissionerate, Chandigarh-II), who vide order dated 19.12.2011 (Annexure A-2) confirmed the demand of Rs.2,49,21,545/-. The amount of Rs.5,64,467/- already paid towards confirmed demand was adjusted. Interest under Section 11AB of the Act along with equal penalty under Rule 15 of the Rules read with Section 11AC of the Act was also imposed. The assessee went in appeal before the Tribunal and the Tribunal, without going into the merits, referred the judgment passed by the Chhattisgarh High Court (in ***Vandana Global Limited***), whereby benefit of Cenvat credit was allowed to the assessee with respect to the steel items as in the case of present respondent-assessee.

Since the judgment of the Chhattisgarh High Court covers the case on merits, the show cause notice dated 03.06.2011 (Annexure A-1) was held to be not sustainable. It was held to be barred by limitation and eventually, the appeal was allowed.

Learned counsel for the appellant has argued that the appeal has only been allowed on the ground of limitation and not on merits. However, he has not been able to refer to any judgment, which has taken a separate view as taken by Hon'ble the Chhattisgarh High Court.

At the same time, learned counsel for the respondent has referred to another judgment passed by the Chhattisgarh High Court in ***Vandana Global Ltd. vs. Commissioner of C. Ex. & Cus, Raipur,*** 2018 (16) G.S.T.L. 462 (Chhattisgarh), wherein similar view has already been taken in favour of the assessee. A perusal of this judgment shows that the Chhattisgarh High Court had again considered the same question of law and observed as under:-

> "4. In the light of the contents of the impugned order of the Tribunal and submissions of the assessee and the Revenue following substantial questions of law are formulated for consideration:
>
> (A) Whether the terms 'capital goods' excludes the structures embedded to earth?
>
> (B) Whether the goods like angles, joists, beams, bars, plates, which go into fabrication of such structures are not to be treated as 'input' used in relation to their final products as inputs for capital goods, or none of the above?

(C) Is the amendment brought in CENVAT Credit Rules, 2004 as per Rule 2 of the CENVAT (Amendment) Rules, 2009 retrospective in nature considering is it clarificatory to be applied to all matters which arise before 07.07.2009, the date of commencement of the CENVAT (Amendment) Rules, 2009: hereinafter referred to as 'Amendment Rules'.

5. The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in *Mundra Ports & Special Economic Zone Ltd.*- 2015 (39) S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows:

We do not find that amendment made in the Cenvat Credit Rules, 2004 which come into force on 07.07.2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification on particular thing or goods and/or input and as such, the amendment could operate only prospectively."

6. That view has been quoted with approval by the Madras High Court in *M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal* (CMA 3814/2014 and connections) decided on 10.07.2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. *M/s Thiruarooran Sugars* also considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech."

Hence, a consistent view has been taken that benefit of Cenvat credit is to be given in respect of the goods like angles, joists, beams, bars, plates, which go into fabrication of structures embedded to earth, which are to be treated inputs for capital goods. In the aforesaid judgment, the Chhattisgarh High Court has examined the term 'capital' goods defined in Cenvat Credit Rules, 2004. Finally, the benefit of Cenvat Credit has been extended to the assessee for using the goods as inputs.

Keeping in view the above judgment, the respondent-assessee has a right to claim Cenvat Credit in the items in question. The impugned order has been rightly passed after appreciating the facts in the right perspective and no ground is made out to interfere in the same. No substantial question of law arises in the present appeal.

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

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

12.04.2023
ajp

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