IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
212

CEA-60-2011 (O&M)
Reserved on: January 08, 2025
Pronounced on: January 28, 2025

M/S YEE KAY TECHNOCRAT PRIVATE LIMITED
.....APPELLANT

Versus

COMMISSIONER, GOODS AND SERVICE TAX COMMISSIONERATE, FARIDABAD
.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Deepak Gupta, Advocate
for the appellant.

Mr. Anshuman Chopra, Sr. Standing Counsel
with Mr. Deepesh Kakkar, Advocate
for the respondent.

SUDEEPTI SHARMA, J.

1. The present appeal is preferred under Section 35G of the Central Excise Act, 1944 (for short 'Act 1944') for quashing impugned order dated 25.01.2011 (Annexure A-3), whereby, the learned Tribunal dismissed the appeal of the appellant holding that the appellant is not entitled to benefit of CENVAT Credit.

2. The brief facts of the case, as per Order-in-Original, are that the appellant is the manufacturer of Engineering Plastic Components and was availing facility of CENVAT Credit under CENVAT Credit Rules; 2002/2004.

3. During the course of audit of the financial and excise records of the assessees, it was noticed by the Audit party, that the assessees had availed of CENVAT Credit amounting to ₹2,78,012/- of duty paid on Capital Goods and at

the same time, claimed depreciation of this part of value of capital goods which represents the amount of duty on such capital goods under Section 32 of the Income Tax Act, 1961, which appeared to be a violation of the provisions of Rule 4 (4) of the CENVAT Credit Rules, 2004 (erstwhile CCR, 2002) resulting in excessive availment of CENVAT Credit by the appellant.

4. The appellant, by their letter dated 24.07.2006, admitted the fact of having taken double benefit by availing of CENVAT Credit as well as claiming of depreciation under the Income Tax Act, of that amount of duty which formed a part of the value of such Capital Goods, which benefit according to them worked out to be ₹2,88,779/- and not ₹2,78,012/- as pointed out by the Audit party. It was also informed that revised Income Tax return with the Income Tax department had been filed by them.

5. Since it appeared that the CENVAT Credit amounting to ₹2,88,779/- (Rupees Two Lac Eighty Eight Thousand Seven Hundred and Seventy Nine Only) taken in respect of the capital goods was availed of wrongly in violation of the provisions of Rule 4 (4) of the CENVAT Credit Rules, 2004/2002 and that the said wrong availment could not be made good by filing a revised Income Tax return with the Income Tax Department by reversing the said depreciation benefit already availed of as claimed by the appellant and that the said wrong availment of credit was done wilfully and intentionally with a view to evading payment of duty and suppressed the said fact from the department and that the department got knowledge of it only on conducting audit of the appellant accounts, a show cause notice was issued to the appellant, who filed response to the same and after giving him personal hearing, the CENVAT credit amounting to ₹2,88,779/- (Rupees Two Lac Eighty Eight Thousand Seven Hundred and Seventy Nine Only) availed by the assessee was disallowed under

Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Act, 1944. Further, penalty to the tune of ₹2,88,779/- under Section 11 AC of the Act, 1944 read with Rule 15 (2) of the CENVAT Credit Rules, 2004 was imposed in Order-in-Original by the Assistant Commissioner on 26/31.12.2007.

6. The appellant preferred appeal against order dated 26/31.12.2007 before the Commissioner of Central Excise (Appeals), whereby learned Commissioner (Appeals) modified the impugned Order-in-Original vide order dated 01.05.2009, which was again challenged by the appellant before learned Customs, Excise and Service Tax Appellate Tribunal by way of filing appeal. Learned Tribunal, vide order dated 25.01.2011, dismissed the appeal filed by the appellant. Hence, the present appeal.

7. Learned counsel for the appellant contends that the learned Tribunal dismissed the appeal of the appellant holding that the appellant is not entitled to the benefit of CENVAT Credit even though benefit of depreciation was reversed by the appellant.

8. Per contra, learned counsel for the respondent contends that admittedly, the appellant availed two benefits of CENVAT Credit as well as depreciation, therefore, the appeal filed by the appellant has rightly been dismissed by learned Tribunal.

9. We have heard learned counsel for the parties and perused the whole records of the case.

10. The undisputed fact, which is also admitted by the appellant, is that the appellant availed CENVAT Credit amounting to ₹2,78,012/- of duty paid on capital goods and at the same time, claimed depreciation of this part of value of capital goods which represents the amount of duty on such capital goods under Section 32 of the Income Tax Act, 1961, which is in violation of Rule 4 (4) of the

CENVAT Credit Rules, 2004. Rule 4 (4) of CENVAT Credit Rules, 2004/2002 is reproduced hereunder:

> "**RULE 4. CONDITIONS FOR ALLOWING CENVAT CREDIT.-**
>
> (4) The CENVAT credit in respect of capital goods shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods, which the manufacturer claims as depreciation under Section 32 of the Income-tax Act, 1961 (43 of 1961)."

11. The admitted fact on record is that the appellant availed CENVAT Credit on capital goods to the tune of ₹6,36,381 in the year 2001-02 and ₹2,25,141/- during the year 2002-03. During the course of audit of the financial and excise records of the appellant conducted by Central Excise audit team,it was observed by the audit party that the assessee had simultaneously claimed the benefit of depreciation on the capital goods in their financial accounts as well as Income Tax returns for the relevant years. And admittedly,it was only when it was pointed out to the appellant that they had availed two benefits, the appellant revised their Income Tax return for the year 2003-04 on 31.05.2005 whereas the period in dispute was 2001-02 and 2002-03. The net result is that during the financial years 2001-02 and 2002-03, the appellant had availed and utilized CENVAT Credit on the capital goods and simultaneously claimed benefit of depreciation on these capital goods under Section 32 of the Income Tax Act, 1961 in their Income Tax returns for the assessment years 2002-03 and 2003-04 and the benefit of said depreciation was never surrendered by them as they had neither filed the revised Income Tax returns for the assessment years 2002-03 and 2003-04 nor they had discharged the liability of additional income tax, which would have accrued on account of surrender of benefit of depreciation, so claimed,

during the above assessment years. Therefore, as per the legal provisions, the CENVAT Credit was not allowable to the appellant on the capital goods since they claimed depreciation on these goods in their books of accounts and Income Tax returns for the year 2001-02 and 2002-03 and as per Rule 4 (4) of CENVAT Credit Rules, 2002/2004, the appellant did not fulfil the condition for allowing the CENVAT Credit, therefore, became liable for recovery of CENVAT Credit wrongly taken or erroneously refunded under Rule 14 of the CENVAT Credit Rules, 2004.

12. In view of the above, we do not find any infirmity in the impugned order dated 25.01.2011 passed by the learned Customs, Excise and Service Tax Appellate Tribunal, therefore, the same is affirmed and the present appeal is dismissed.

13. All the pending applications, if any, also stand disposed of.

(ARUN PALLI)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 28, 2025
pj

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