CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 2157 of 2010

[Arising out of Order-in-Appeal No. 243/2010 dated 12/07/2010 passed by the Commissioner of Central Excise (Appeals-II), Bangalore]

K.M.S. Coach Builders Pvt. Ltd.
No. 125/1-B, Near BMTC Depot 12
Industrial Area, Kengeri
Mysore Road, Bangalore – 560 060

Appellant(s)

VERSUS

C.C.E, Bangalore-III
P.B. No. 5400, Queens Road
Central Revenue Building
Bangalore - 560 001

Respondent(s)

APPEARANCE:
Mr. Pradyumna G.H., Advocate for the Appellant
Mr. H. Jayathirtha, AR for the Respondent

CORAM:
HON'BLE DR. D. M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20979 / 2023

Date of Hearing: 15/06/2023
Date of Decision: 10/10/2023

Per: D.M. Misra

This appeal is filed against Order-in-Appeal No. 243/2010 passed by the Commissioner of Central Excise (Appeals-II), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the activity of body building/manufacture of motor vehicles falling under Chapter Sub Heading 8702 9099 of Central Excise Tariff Act, 1985 on the duty paid chassis received from the customers. During the period in question i.e. from December 2006 to July 2007, the appellants were undertaking body building activity for M/s. Ashok Leyland Ltd. on the duty paid chassis supplied to them and on completion of body building, they returned the same to M/s. Ashok Leyland Ltd. on payment of applicable duty on the value of the body building activity. They availed cenvat credit on the materials used for body building of the chassis supplied by M/s. Ashok Leyland Ltd. under Notification No. 6/2006-CE dated 01/03/2006 (Sl. No. 41 (ii)). They also undertake body building for M/s. NEKRTC and others on the duty paid chassis supplied by them without availing cenvat credit on the materials used for body building. They removed the said finished goods accordingly without payment of duty as per Sl. No. 39 (i) of Notification No. 6/2006-CE dated 01/03/2006. Consequent to the visit of the Departmental Audit Team, on verification of accounts, and on the insistence of the audit team, the appellant reversed cenvat credit of Rs. 4,14,000/- (Rupees Four Lakhs Fourteen Thousand only) being cenvat credit availed on inputs used in the manufacture of body building for NEKRTC while availing benefit against Sl. No. 39(i) of Notification No. 6/2006-CE dated 01/03/2006. Subsequently, show-cause notice was issued to them on 04/01/2008 alleging that they have wrongly availed the benefit of exemption Notification No. 6/2006-CE dated

01/03/2006 with regard to 55 numbers of vehicles cleared to M/s. NEKRTC and others and consequently required to pay duty amounting to Rs. 33,51,260/- (Rupees Thirty Three Lakhs Fifty One Thousand Two Hundred and Sixty only) along with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved, they approached the learned Commissioner (Appeals) who in turn rejected their appeal. Hence, the present appeal.

3. At the outset, the learned Advocate for the appellant has vehemently argued that they have not availed cenvat credit on the inputs used in the manufacture/body building of vehicles on duty paid chassis supplied by NEKRTC, BMTC. He has submitted that during the period December 2006 to July 2007, they have cleared 55 numbers of vehicles by availing benefit of exemption Notification No. 6/2006-CE dated 01/03/2006 [Sl. No. 39(i)] without payment of duty. The cenvat credit of Rs. 4,14,000/- (Rupees Four Lakhs Fourteen Thousand only) reversed by them on the instance of the internal audit party even though they have not availed any credit on the inputs used in the fabrication of the said 55 numbers of vehicles. He has submitted that the appellant has meticulously maintained separate accounts in their factory premises of the inputs used in the fabrication/body building of motor vehicles where they have availed benefit of Notification No. 6/2006-CE dated 01/03/2006 relating to clearance to M/s. Ashok Leyland Ltd. as well as to NEKRTC and others. In support that they have not availed cenvat credit in relation to manufacture of 55 numbers of vehicles, they enclosed

the statements while submitting their reply to the show-cause notice as well as with their present synopsis (pages 56 to 88 being annexure H and I). He has further submitted that these documents have not been considered by the authorities below and the order was passed solely on the ground that on the objection raised by the audit, the appellant has reversed the cenvat credit. Further, as an alternative argument the learned advocate has submitted that reversal of cenvat credit by the appellant could not be considered as availing of cenvat credit. In support, he has referred to the judgments of this Tribunal in the case of *Sri Lakshmi Saraswathi Textiles (Arni) Ltd. Vs. C.C.E., Pondicherry – 2008 (222) E.L.T. 390 (Tri.-Chennai), Dr. Writer's Food Products Pvt. Ltd. Vs. Commr. of C. Ex., Pune-II – 2009 (247) E.L.T. 391 (Tri.-Mumbai), Tree House Hotel Club & Spa Vs. Commissioner of C. Ex., Jaipur-I – 2017 (4) G.S.T.L. 39 (Tri.-Del.).*

4. Learned AR for the Revenue reiterated the findings of the learned Commissioner (Appeals).

5. Heard both sides and perused the records.

6. The short question needs to be answered is: whether the appellants are entitled to the benefit of Notification No. 6/2006-CE dated 01/03/2006 Sl. No. 139(i) in relation to 55 numbers of vehicles cleared during the period December 2006 to July 2007 to NEKRTC and others on the activity of body building carried out by the appellant on the duty paid chassis. We find that pursuant

to the visit of audit, the appellant was directed to reverse cenvat credit of Rs. 4,14,000/- (Rupees Four Lakhs Fourteen Thousand only) on the ground that credit on inputs have been availed that were used in the manufacture/fabrication of 55 numbers of motor vehicles on the duty paid chassis supplied to M/s. NEKRTC and others. Accordingly, the appellant had complied with the said objection of the audit team even though they have not accepted the fact of availing of cenvat credit on inputs used in the manufacture of said 55 vehicles. Later, in their reply to the show-cause notice, the appellant had furnished details of the credit availed on inputs relating to fabrication/manufacture of body building of vehicles on the duty paid chassis of M/s. Ashok Leyland and statement of non availment of cenvat credit on various inputs used in the fabrication of 55 vehicles. Copies of the same are now enclosed by the appellant in their written submissions as Annexure H & I.

7. From the records, we find that even though these documents have been submitted before the authorities below, however, no cognizance has been taken nor any finding on the same recorded to ascertain the claim of the appellant on facts as to whether separate accounts were maintained in availing credit on inputs used by the appellant in fabrication of vehicles cleared to M/s. Ashok Leyland and NEKRTC relating to 55 vehicles. Therefore, it remained to be examined whether in fact the appellants have availed cenvat credit on inputs used in or in relation to the manufacture of 55 vehicles as alleged in the notice or their claim of non-availment is correct. We find force in

the contention of the learned Advocate for the appellant that even though the audit team has recorded an observation that the appellant had availed cenvat credit on inputs used in the manufacture of 55 vehicles cleared to NEKRTC and others but details have not been furnished to the appellant substantiating the said objection. In these circumstances, it is prudent to remand the matter to the adjudicating authority to ascertain the fact in the light of the Annexure H & I submitted by the appellant in support of their claim that separate accounts were maintained for the inputs used in connection with bodybuilding activity carried out for M/s. Ashok Leyland and inputs used in the manufacture of 55 vehicles in question, where no cenvat credit availed. Needless to mention a reasonable opportunity of hearing be allowed to the appellant. All issues are kept open. Appeal is allowed by way of remand to the adjudicating authority.

(Order Pronounced in Open Court on 10/10/2023)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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