CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/498/2010

(Arising out of Order-in-Appeal No. 46/2009 (H-II) CE dated 08.12.2009 passed by Commissioner of Customs, Central Excise & Service Tax (Appeals-I&III), Hyderabad)

Commissioner of Central Excise,
Hyderabad –III **.....Appellant(s)**

Vs.

M/s Bhagyanagar Metals Ltd., **.....Respondent(s)**

Appearance
Shri P.S. Reddy, Assistant Commissioner (AR) for the Appellant.
Shri P.V.B. Chary, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 13/11/2018
Date of Decision: 13/11/2018

FINAL ORDER No. A/31572/2018

[Order per: P. Venkata Subba Rao]

This appeal has been filed by the Revenue against Order-in-Appeal No. 46/2009 H-II) CE dated 08.12.2009.

2. The respondents herein are manufacturers of excisable goods and are availing CENVAT credit under CENVAT Credit Rules. During verification of records, the officers found that during the period

2003-2004, 2004-2005 & 2005-2006 respondents have cleared some capital goods 'as such' paying duty on the transaction value declared in their sale invoices and reversed the CENVAT credit accordingly. As the capital goods were removed after using them for some years, their sale value was much lower than the value when they were purchased. It was felt that 3(4) of CENVAT Credit Rules, 2002 required the assessee to reverse the CENVAT credit on the capital goods when they are removed 'as such' from the factory. Therefore, they are required to reverse the CENVAT credit availed by them on the capital goods so removed. Instead, the appellant had acquired the capital goods and sold them after using them for some years and hence their value had depreciated. They reversed CENVAT credit on the invoice value of the capital goods at which they sold and hence they are reversed the CENVAT credit of the value lower than the CENVAT credit availed by them. A show cause notice was issued and after following due process, an order was issued by the lower authority confirming the demand of duty under Section 11A(1) of the Central Excise Act, 1944 read with Rule, 12/14 of CENVAT Credit Rules, 2002/2004 along with interest under Section 11AB. Penalty was also imposed under Section 11AC read with Rule 13/15 of CENVAT Credit Rules, 2002/2004 equal to the amount of duty so remanded.

3. Aggrieved, the appellant preferred an appeal before the First Appellate Authority who set aside the order of the lower authority and allowed the appeal. The present appeal is filed by the Revenue is against this order of the First Appellate Authority.

4. After hearing both sides for some time we find that the dispute falls in very short compass i.e., whether the expression 'as such' used in Rule 3(4) of CENVAT Credit Rules would cover capital goods which were cleared after being used for a number of years and if so whether the respondent is required to reverse as much credit as was taken at the time of purchase of capital goods or duty is required to be paid on the depreciated transaction value. This issue is no longer res integra. The Hon'ble High Court of Madras in the case of *CCE, Coimbatore Vs. Lakshmi Machine Works Ltd.,* [2015 (321) ELT 577 (Mad.)] held that the assessee was required to reverse the credit equal to credit originally availed only if the capital goods were removed 'as such' which meant without putting the machinery to any use. In the case of *CCE, Salem Vs. Rogini Mills Limited* [2011 (264) ELT 367 (Mad.)] the Hon'ble High Court of Madras held that the quantum of credit reversal under Rule 3(4) (c) and 3(5) of CENVAT Credit Rules, 2004 has to be on the depreciated value of capital goods and not on the full value. In the case of *Navodaya Plastic Industries Ltd.,* [2013 (298) ELT 541 (Tri. – LB)] the larger Bench of the Tribunal also held that the full credit taken at the time of receipt of the capital goods need not be reversed when they were removed after using them for some time. Similar decision was held in the case of *Shree Rajasthan Syntex Ltd.,* [2012 (282) ELT 550 (Tri.-Del.)].

5. Respectfully following these decisions, we find that the reversal of CENVAT credit on the depreciated value of the capital goods which were used for some time by the respondent herein is correct and the demand of differential duty along with interest and

imposition of penalties have been correctly set aside by the First Appellate Authority and the impugned order requires no interference.

6. In view of the above, we find the appeal is liable to be rejected and we do so. The appeal is rejected and the impugned order is upheld.

(Operative part of this order was pronounced in open court
on conclusion of hearing)

P. VENKATA SUBBA RAO	**M.V. RAVINDRAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Lakshmi....