CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD

Division Bench

Court - I

Appeal No. E/394/2009

(Arising out of Order-in-Original No.77/2008 C.Ex. dated 20.11.2008 passed by CCCE & ST, Hyderabad - IV)

Lokesh Machines ….. Appellant(s)

Vs.

CCCE & ST, Hyderabad - IV ….. Respondent(s)

Appearance

Ms Siri Reddy, Advocate for the Appellant.

Shri P.S. Reddy, Dy. Commissioner/AR for the Respondent.

Coram:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)

HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 28.01.2019
Date of Decision: 28.01.2019

FINAL ORDER No. A/30157/2019

[Order per: P.V. Subba Rao.]

1. This appeal is filed against Order-in-Original No. 77/2008 C.Ex. dated 20.11.2008.

2. The appellant herein is engaged in manufacture of crank cases falling under Chapter heading No.84099941. During the period March, 2006 to November, 2006 they availed CENVAT credit of Rs.70,25,601/- on certain capital goods. These goods were consigned to M/s Ashok Leyland Ltd (M/s ALL) but were received by assessee for undertaking job work. It appeared that assessee has wrongly taken credit of such capital goods. On being pointed out, they reversed the entire amount in two instalments. A show cause notice was issued to the assessee demanding the aforesaid irregular credit of CENVAT credit on capital goods already taken which was subsequently reversed along with interest. It was also proposed to impose penalty on them under Rule 15(1) of CENVAT Credit Rules, 2004. After

following due process, the adjudicating authority confirmed the demand as already reversed by the appellant under Rule 14 of CENVAT Credit Rules, 2004 read with Sec.11A(1) of the Central Excise Act. He also confirmed the interest of Rs.5,91,408/- on the above amount under Rule 14 of CENVAT Credit Rules, 2004 and imposed penalty of Rs.50,000/- under Rule 15 of CENVAT Credit Rules, 2004. Hence, this appeal.

3. Learned counsel for the appellant submits that they had availed credit of capital goods which they had received but which were consigned to their principal manufacturer M/s ALL for whom they manufactured crank cases. Although the capital goods were consigned to M/s ALL, they were all delivered to them and therefore, they were entitled to credit of the goods so used. However, on being pointed out by the department, they have reversed the entire amount of credit so taken but had not paid interest under the bonafide belief that the same is not required to be paid. A show cause notice dated 4.04.2008 was issued beyond the period of one year and it does not dispute the reversal of CENVAT credit. It only demands interest on the amount of credit reversed and also proposes penalty. As far as the demand of interest is concerned, the show cause notice was issued after one year. Although there is no time limit for demand of interest in the statutory provisions, this has been fixed by the Hon'ble Apex Court in the case of Commissioner Vs TVS Whirlpool Ltd [2000 (119) ELT A177 (SC)] as follows:

> *"It is only reasonable that the period of limitation that applies to a claim for the principle amount should also apply to the claim for interest thereon. We find no merit in the appeals and they are dismissed with costs."*

4. She further, submits that relying on the above judgment this bench in the case of Hindupur Bio-Energy Pvt Ltd [Appeal No. ST/30605/2018] vide Final Order No.A/31293/2018 dated 09.10.2018 set aside the demand of

interest on the ground that it was made after the time limit. She also relies on the following case laws:

a. Hindustan Insecticides Ltd vs. CCE, LTU [2013 (297) ELT 332 (Del)]
b. CCE vs. Emco Ltd [2015 (325) ELT A104 (Bom.)]
c. V Mathalagan vs. CCE, Puducherry [2018-TIOL-1509-CESTAT-Mad.]
d. Pahwa Chemicals Pvt Ltd vs. CCE, Delhi-IV [2014 (311) ELT 205 (Tri-Del)]
e. Ucal Systems Ltd vs. CCE, Chennai [2010 (261) ELT 375 (Tri-Chennai)]
f. India Medical Practitioners Co op Pharmacy & Stores Ltd vs. CCE, Chennai [2017 (349) ELT 788 (Tri-Chennai)]
g. Kailash Auto Builders Pvt Lt vs. CCE, Bhopal [2017 (357) ELT 803 (Tri-Del)]
h. Bharat Aluminium Ltd vs. CCE, Raipur [2016 (342) ELT 404 (Tri-Del)]

5. On the question of penalty, she submits that they had no intention to wrongly avail CENVAT credit or utilize it and they had promptly reversed the same and therefore, no penalty may be imposed under Rule 15(1) of CENVAT Credit Rules, 2004.

6. Learned departmental representative reiterates the findings of the lower authority. He submits that the penalty under Rule 15(1) of CCR, 2004 is a mandatory penalty and the appellant cannot escape this merely because they have reversed the credit taken. He, therefore, prays that the appeal may be rejected.

7. We have considered the arguments on both sides and perused the records. As far as the amount of credit taken is concerned, the appellant has not disputed the amount and has reversed the amount. The dispute in question is whether the appellant can take credit on the strength of the invoices which were raised in the name of their principal manufacturer M/s

ALL. As the appellant has not contested this at any stage, this point is not in dispute. The only question is whether the appellant is also required to pay interest and if so, whether the demand of interest is hit by limitation. It has been held by the Hon'ble Apex Court in the case of TVS Whirlpool Ltd (supra) that the demand of interest has to be made within the normal period of limitation or 5 years as the case may be, as is applicable to the demand of duty itself. In this case, there is no allegation or evidence that there was any fraud, collusion, wilful misstatement or suppression of facts with an intention to evade payment of interest on the CENVAT credit. Therefore, the demand of interest should have been made within one year and this has not been done within this time limit. In view of the ratio of the judgment of the Hon'ble Apex Court in the case of TVS Whirlpool Ltd (supra), we find that no demand can be made for the interest being time barred.

8. In so far as the imposition of penalty under Rule 15(1) of CENVAT Credit Rules, 2004 is concerned, we find that this rule reads as follows:

> *"**Rule 15(1)**: If any person, takes or utilises CENVAT credit in respect of input or capital goods or input services, wrongly or in contravention of any of the provisions of these rules, then, all such goods shall be liable to confiscation and such person, shall be liable to a penalty not exceeding the duty or service tax on such goods or services, as the case may be, or two thousand rupees, whichever is greater."*

9. Therefore, to attract penalty under Rule 15(1) of CENVAT Credit Rules, 2004, the person should have taken or utilized CENVAT Credit wrongly or in contravention of the provisions of the Rule. In this case, we find that the appellant has, indeed, used the goods on which credit was taken as job worker of their principal manufacturer M/s ALL, on whose name the invoices were issued. Credit on inputs or capital goods can be availed based on their utilization and not necessarily based on name of the consignee in the invoice which can be different. In case of job work, this happens quite often when the goods are purchased by the principal manufacturer and sent directly to

the job worker. The job worker in such cases is entitled to take credit. We, therefore, find that, *prima facie* there is no evidence of taking credit wrongly by the appellant. It is different matter that the appellant has not disputed and has reversed the credit and is also not contesting reversal of CENVAT credit done by them voluntarily. We, therefore, find that this is not a case fit for imposition of penalty under Rule 15(1) of CENVAT Credit Rules, 2004. In view of our findings, we pass the following order:

The impugned order is modified to the extent that the interest of the period beyond one year from the show cause notice is set aside and the demand of interest within one year is confirmed and the penalty under Rule 15(1) is set aside.

10. The appeal is disposed of as herein above.

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

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

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