CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 05

Excise Appeal No. 89335 of 2018

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-0311/18-19 dated 07.09.2018 passed by Commissioner of Central Tax (Appeals-I), Pune)

M/s The Supreme Industries Ltd. **.....Appellant**
Solitaire Corporate Park, Building No.11-01,
Ground Floor, 167, Guru Hargovindji Marg, Chakala,
Andheri (East), Mumbai-400093.

VERSUS

Commissioner of Central Excise & Service Tax-Pune I **.....Respondent**
2nd Floor, E Wing, GST Bhavan, 41/A Sassoon Road,
Opp. Wadia College, Pune-411001.

Appearance:

Shri T.C. Nair, Advocate for the Appellant
Smt Anuradha Parab, Authorized Representative for the Respondent

CORAM: Hon'ble Mr. Anil Choudhary, Member (Judicial)

FINAL ORDER NO. A/86275 / 2019

Date of Hearing: 09.05.2019
Date of Decision: 09.05.2019

ANIL CHOUDHARY

The brief facts are that the appellant is a manufacturer of various plastic moulded articles which are cleared on payment of duty. The appellant took the credit on capital goods namely injection moulding machines, Hopper Dryer and Hopper Loader received from their sister unit at Puduchhery in April 2002 and used the same in their factory till the time they were cleared to their another unit at Kuskhera, Bhivadi. As the said capital goods were cleared after having been used for 3-4 years, the Appellants did not reverse any credit, in October 2006 on clearance to Bhiwadi.

2. During scrutiny of records by audit (CERA) it was observed from the depreciation chart attached with the balance-sheet for the year 2006 – 07, that Appellant have transferred Plant and Machinery, Moulds to their own unit without

reversing any Cenvat credit. The total value of the goods transferred to their own unit's was shown as Rs. 2,85,87,794/- for plant and machinery plus Rs.80,11,000/- for Moulds, totally valued at Rs. 3,65,98,794/-. It appeared to revenue that the appellant as per Rule 3(5) of CCR 2004 was required to reverse the Cenvat Credit taken, as the goods have been removed as such. Accordingly invoking the extended period of limitation, show cause notice dated 30 December 2009 was issued proposing to demand Rs. 26,97,934/- under Section 11 A(1) of the Act read with Rule 14 of CCR, 2004 and further penalty was also proposed.

3. The Appellant contested the SCN mainly on the ground that already used goods had been received from their other unit in April 2002, which had been cleared under invoice from their other unit at Puduchhery. Thereafter having used the goods for 3 – 4 years the appellant had cleared the goods to another unit at Bhivadi. Thus as the goods had been used and thereafter cleared, thus it was not clearance as such and accordingly they took the stand that no amount is reversible under Rule 3(5) of Cenvat credit rules. They also placed reliance on the ruling of this tribunal in Madura Coats Pvt Ltd. reported at 2005 (190) ELT 450 (Tri), where in it was held that it would lead to absurd results if an assessee is required to reverse the credit originally availed by them at the time of receipt of capital goods, when the said capital goods are subsequently removed after having put to use. The Tribunal further held that this would defeat the very purpose *of grant of facility of Modvat credit in respect of capital goods and would not be in accordance* with the legislative intent. The learned counsel also stated that there are several decisions holding in favour of the Appellant then also against the Appellant on the issue in the matter had referred to the larger bench of this Tribunal in Modernova Plast yles Pvt Ltd versus CCE in Appeal No. E/3243/2006 which were decided by final order of the larger bench dated 10.10.2008 reported at 2008 (232) ELT 29 wherein it was held that the expression as such has to be interpreted as commonly understood, which is in the original form and without any addition, alteration or modification. Consequently the larger bench held that an assessee removing capital goods was required to reverse the Cenvat Credit, whether used or not.

4. Being unsuccessful before the Commissioner Appeals the appellant is in appeal before this Tribunal. The learned counsel states that it is evident that the

show cause notice has been issued in December 2009, after the larger bench judgement in Modernova Plast dated 10 October 2008. Thus evidently the show cause notice has been issued by way of change of opinion. He also points out from the show cause notice, that the transaction was duly recorded in the books of accounts and also disclosed in the annual balance-sheet, profit and loss account, etc., and no case of contumacious conduct or suppression is made out. Accordingly the show cause notice is not maintainable for invocation of extended period of limitation. Further arguing on merits the learned counsel states that Hon'ble Punjab & Haryana High Court in Commissioner of C. Ex., Chandigarh V Raghav Alloys Ltd 2011(268) E.L.T. 161 held that where capital goods have removed after a period of user it cannot be said that the goods are been removed as such and accordingly no amount of Cenvat Credit is reversible. The said ruling of the P&H High Court have been followed by Hon'ble Delhi High Court in Harsh International (Khaini) Private Ltd vs. CCE 2012(281) ELT 714 (Del) and also in CCE Solectron Centum Electronics Ltd., 2014 (309) ELT 479(Kar) by the Hon’ble Karnataka High Court.

5. The Learned A.R. for Revenue has relied upon the impugned order.

6. Considering the rival contentions, I am satisfied that the show cause notice have been issued by way of change of opinion, and there is no suppression of facts etc., on the part of the Appellant. Accordingly I hold that the show cause notice is not maintainable as extended of limitation is not invokable . Further on merits also the issue is covered in favour of the Appellant by the various high courts. Accordingly the appeal is allowed and the impugned order is set aside. Appellant is entitled to consequential benefits in accordance with law.

(Dictated and pronounced in the open court)

(ANIL CHOUDHARY)
Member (Judicial)

SG