C.C.E. Vs. Cnc Commercial Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Feb-28-2006

Judge : N T C.N.B.

Appellant : C.C.E.

Respondent : Cnc Commercial Ltd.

Judgement :

1. Revenue is in appeal challenging the order of the Commissioner (Appeals) whereunder he quashed the demand of Rs. 56,427/-. The said demand had arisen under Rule 12 of the CENVAT Credit Rules.

2. The facts are that the respondent is a small scale unit availing itself of the annual value of clearance based exemption from duty for such units. As a result, first clearances of the respondent in the early part of any financial year remains exempt. And no modvat credit on inputs is available for such exempt clearances. Subsequently, upon changeover to payment of duty, modvat credit is taken in respect of inputs. This cycle repeats annually.

3. Rule 9(2) of Cenvat Rules relates to changeover from duty paid clearances to exempt clearances. That Rule may be extracted: 9(2). A manufacturer who opts for exemption from whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking Cenvat credit, on inputs before such option is exercised shall be required to pay an amount equivalent to the Cenvat credit, if

any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export.

4. The demand was raised in the present case when the appellant reverted to exemption with effect from 1.4.2002. The appellant reversed the cenvat outstanding in his account. But revenue took the view that outstanding credit amount was less than the "Cenvat credit allowed in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when option was exercised" and the respondent should pay the differential amount in addition to reversing the outstanding credit. The demand which was confirmed in adjudication on this basis was set aside by the Commissioner in appeal by following the judgment of the Supreme Court in the case of Collector v. Dai Ichi Karkaria Ltd. and the judgment of the Tribunal in the case of C.C.E., Rajkot v. Ashok Iron & Steel Fabricators . The challenge in the present appeal is the order in appeal.

5. The contention of the learned DR is that in the present case, since the assessee had opted for exemption, he was to pay in terms of that exemption. The learned DR points out that rule specifically provides that "assessee shall be required to pay an amount equivalent to Cenvat credit". It is the learned DR's contention that since the rule specifically requires payment of an amount equal to the Cenvat credit, the assessee cannot opt for benefit of the exemption without fulfilling that requirement. Learned DR would also contend that it is well settled that any terms of a statutory provision cannot be read as redundant or superfluous [Grasim Industries Ltd.] and the Commissioner has deviated from this rule of interpretation in his order. Learned DR also relies on the judgment of the Hon'ble Supreme Court in the case of State of Jharkhand v. Ambey Cement 2004 (178) ELT 55 (SC) in support of her contention that exemption provision in the statute is to be strictly interpreted and conditions of exemption are required to be met. She also relies on the judgment of the Supreme Court in the case of British Airways Plc. v. UOI in support of her

contention that principle of harmonious construction warrants that while interpreting the statute, the Court should try to sustain its validity and give such meaning to the provisions which advance the object sought to be achieved by the enactment. The submission is that an interpretation of Cenvat Rules which goes contrary to the specific requirement under Rule 9(2) "to pay modvat credit already taken on inputs" is to be avoided.

6. Learned Counsel appearing for the respondent relies on the decision followed by the learned Commissioner (Appeals) to contend that issue is no more res Integra. It is being pointed out that demand in the present case having been raised under Rule 12 of Modvat Credit Rules, it can be sustained only in terms of that Rule. It is being pointed out that Rule 12 admits of recovery of only "where Cenvat credit has been taken or are utilised wrongly". It is the learned Counsel's submission that in the present case, there can be no contention that credit was wrongly taken inasmuch as credit was taken only on inputs when the appellant was discharging duty on the final product. According to learned Counsel, there could also be no contention of wrong utilisation of credit inasmuch as the same was used only for discharging duty liability on final products. Learned Counsel would contend that in a case where taking and utilisation of credit are according to the provisions of Cenvat Credit Rules, no recovery can be effected under Rule 12.

7. Learned Counsel also strongly relies on the judgment of the Apex Court in Dai Ichi Karkaria case and contends that Court has ruled in that case after considering all the provisions under Modvat Rules that the credit is "indefeasible" and once the credit was correctly utillised it cannot be called back. It is his submission that Larger Bench of this Tribunal considered the same issue in the case of Ashok Iron & Steel Fabricators and relying on the decision of the Apex Court in the case of Dai Ichi Karkaria, held that credit once correctly utilised cannot be called back.

8. A perusal of the record makes it clear that revenue has taken no objection whatsoever to the original taking of credit and its utilisation. Thus, both taking of credit and utilisation of credit were correct. It is sell settled that credit correctly taken and utilised cannot be demanded. The judgment of the Larger Bench of this Tribunal in the case of Ashok Iron & Steel Fabricators and the judgment of the

Apex Court in the case of Dai Ichi Karkaria are clearly in respondent's favour.

9. It is to be noted that it remains ruled by the Apex Court that Modvat credit is indefeasible. The effect of the ruling is that credit once correctly taken and utilised is incapable of being set aside, made void . In the present case, the revenue is demanding back credit which was correctly taken and utilised relying on Rule 9(2). This is not permissible in view of the ruling of the Supreme Court in Dai Ichi Karkaria.

10. Coming to the submission of the learned DR that assessee opting for exemption must fulfill the terms of the exemption, it is to be noted that exemption is in terms of notification issued from year to year and not in terms of Rule 9(2) of CENVAT Credit Rules. There is no reference or incorporation of the condition of Rule 9(2) in those notifications.

That apart, Rule 9(2) cannot be interpreted in a manner as to undermine the indefeasibility of modvat credit/A reading of the said rule would make it clear that what is required in terms of the rule is to determine the CENVAT credit taken on the inputs in stock and debit it from the credit balance, "if any", lying in assessee's credit, and further credit balance, "if any", lapsing and not recall of modvat credit already utilised correctly. If the Rule contemplated additional cash payment on account of balance in Cenvat credit being insufficient, the Rule would not have qualified the credit balance as balance "if any". The addition of those words make it clear that cenvat credit balance alone is contemplated and no additional payment. An interpretation that requires additional payment if the balance in the credit account is not sufficient to meet debit of cenvat credit on inputs in stock etc. would be to permit recall of modvat credit correctly utilised. Such an interpretation goes against the scheme of Cenvat credit and the language of Rule 9(2).

11. In view of what is stated above, there is no merit in the appeal of the revenue. It fails and is rejected.