

Technomech Engineers Vs. Cce, Nashik

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Apr-20-2012

Judge : The Honourable Mr. P.R. Chandrasekharan, Member (Technical)

Appeal No. : APPLICATION NO. E/S/2021/10 IN APPEAL NO. E/1894/10 -Mum
(Arising out of Order-in-Appeal No. AK

Appellant : Technomech Engineers

Respondent : Cce, Nashik

Advocate for Pet/Ap. : For the Appellants : Shri M.S. Jagesha, Advocate. For the
Respondent : Shri A.K. Prabhakar, Superintendent (A.R.).

Judgement :

P.R. Chandrasekharan

The appeal and stay application are directed against the order-in-appeal AKP/249 to 251/NSK/2010/9094 dated 14.10.2010 passed by the Commissioner of Central Excise and Customs (Appeals), Nashik.

2. The facts arising for consideration in this case are as follows.

2.1 The appellant M/s Technomech Engineers are manufacturers of motor vehicle parts and they availed CENVAT credit on input and capital goods used in the manufacture of the said goods. During the year 2006-07 and 2007-08 they availed

CENVAT credit of Rs.1,52,779/- being 50% of the credit of the duty paid on capital goods + Education Cess and during subsequent year 2007-08 they availed the balance 50% of the CENVAT credit on the capital goods. Investigation by the DGCEI, Nasik on 25.09.2009 revealed that the appellant had claimed depreciation on the entire amount of credit of Rs.3,04,342/- under Section 32 of the Income Tax Act, 1961 as evident from Income Tax Return for the year 2007-08. As per CENVAT Credit Rules, 2004, the CENVAT credit shall not be allowed in respect of that part of the value of capital goods which represents the amount of duty on such capital goods which the manufacturer claims as depreciation under Section 32 of the Income Tax Act. On being pointed out by the department, the appellant rectified the mistake by correcting the income tax return for the year 2007-08 and reversing 50% credit of Rs.1,51,563/- availed in 2006-07 and also paid interest thereon. The Rectification of Mistake for the year 2007-08 was also accepted by the Income Tax department. A show-cause notice dated 25.02.2010, issued to the appellant asking to show-cause why CENVAT credit of Rs.3,04,342/- availed should not be recovered under Rule 14 CENVAT Credit Rules, 2004, read with Section 11A (1) of the Central Excise Act, 1944 and amount of Rs.1,51,563/- paid should not be appropriated against the recovery. The case was adjudicated by the original adjudicating authority vide Order dated 30.07.2010. The assessee pleaded that for the year 2007-08 they availed CENVAT credit and reversed the depreciation amount claimed and also paid income tax thereon along with interest. However, this plea was not accepted and the adjudicating authority confirmed the duty demands apart from imposing penalties. The appellant preferred an appeal before the Commissioner (Appeals) and the Commissioner (Appeals) also did not accept the plea for allowing CENVAT credit in lieu of the revised income tax returns filed by them. He also upheld equivalent penalty imposed on the appellant and reduced the quantum of redemption fine to Rs.1,00,000/- in respect of the capital goods, held liable for confiscation. Hence the appellant is before me.

3. The learned Advocate for the appellant made the following submissions:-

3.1 As far as the credit taken during 2006-07 is concerned they have already reversed the credit along with interest thereon. Therefore, the demand is not sustainable. As far as the credit taken for the year 2007-08 is concerned, they

have filed a revised return in 2008-09 wherein they have paid income tax along with interest on the depreciation claimed in the original return. This revised Income Tax Return has been accepted by the Income Tax department also, a copy of which has been submitted by the appellant. Accordingly, he submits that the said order for the year 2007-08 is not sustainable in law. He also relied on the judgement of the Hon'ble High Court of Gujarat in the case of CCE and Customs, Surat vs. Nish Fibres - 2010 (257) ELT 81 (Guj.) wherein the Hon'ble High Court held as follows:-

“We are of the view that the position is well settled in law. The whole idea is that the assessee should not be permitted to claim double benefit, i.e. under the Income Tax Act as well as Central Excise Rules. Admittedly, the appellant has not claimed the benefit under the Income Tax Act and the claim regarding depreciation was withdrawn by filing the revised return and that revised return has been accepted. Considering these undisputed facts, there is no reason to deny the Modvat credit to the respondent.”

4. The learned A.R. on the other hand reiterated the findings given in the orders by the adjudicating authority and lower appellate authorities.

5. I have carefully considered the rival submissions. I am of the view that the appeal itself can be disposed of at this stage. Therefore, after granting stay, I take up the appeal for consideration.

5.1 The facts of the case are identical to that and covered by the decision in the case of Nish Fibres (supra). Therefore, the ratio therein would squarely apply to the present case. Accordingly, I hold that the appellant is entitled for the CENVAT credit of duty paid on capital goods for the year 2007-08 and set aside the impugned order confirming the demand of CENVAT credit for the year 2007-08. In as much as the appellant has discharged the CENVAT credit liability for the year 2006-07 along with interest thereon and also eligible for the year 2007-08, imposition of equivalent penalty is not justified and accordingly I set aside the same. The goods have also been confiscated with a redemption fine of Rs.1,00,000/-. In as much as the appellant has complied with law, I am of the view that confiscation of capital goods is not warranted at all in the facts of the case and

set aside the same.

6. Thus I allow the appeal with consequential relief, if any.

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