M/S. Srf Ltd Vs. Cce, Chennai

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Chennai

Decided On : Feb-10-2012

Judge : The Honourable Dr Justice Chittaranjan Satapathy, Technical Member

Appeal No. : E/129 of 2007 & E/130 of 2007

Appellant : M/S. Srf Ltd

Respondent : Cce, Chennai

Advocate for Pet/Ap. : For the Appellant: M. Karthikeyan, Advocate. For the Respondent: Ms. Indira Sisupal, JDR,

Judgement :

1. Heard both sides in respect of both these appeals.

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2. The Ld. Advocate Shri M. Karthikeyan, appearing for the appellants states that in this case the appellants took 100% credit in respect of capital goods in the first year, whereas under the Rules they were eligible to take only 50% of the credit. On this being pointed out, the appellants have reversed 50% of the credit before issue of Show Cause Notice and it is a fact that the appellants have not utilized the credit. He states that the dispute in this appeal is whether interest and penalty is payable in respect of the credit wrongly taken initially but reversed subsequently. He states that the issue stands settled by the decision of the Honble High Court of

Karnataka in the case of the Commissioner (LTU), Bangalore Vs. M/s. Bill Forge Pvt. Ltd. 2011-TIOL-799-HC-KAR-CX.

3. Heard the Ld. DR who states that interest and penalty are leviable in a case of wrong availment of credit following the decision of the Honble Supreme Court in the case of UOI Vs. Ind-Swift Laboratories Ltd. 2011 (265) ELT 3(S.C).

4. I have considered the detailed submissions from both sides. In the case of CCE, Mumbai Vs. Bombay Dyeing and MFG. Co. Ltd. -2007 (215) ELT 3 (S.C.), the Honble Supreme Court held that reversal of credit before utilization was as good as not taking the credit in the context of applying the exemption under Notification No. 14/2002-C.E. However, I find that in the case of Ind-Swift Laboratories Ltd. (supra), the Honble Supreme Court has subsequently dealt with a case of taking credit wrongly and the consequent liability to pay interest. No doubt, the Honble High Court of Karnataka in the case of M/s. Bill Forge Pvt. Ltd. (supra) has considered the decision of the Honble Supreme Court in the case of Ind-Swift Laboratories Ltd.(supra) and has come to a conclusion that in a case where the wrongly availed credit was reversed without utilization, no interest would be chargeable.

5. In the present case, it is a fact that the appellants had reversed the credit which was wrongly taken, before utilization as stated by the Ld. Advocate. However, I also find in the case of Ind-Swift Laboratories Ltd. (supra), the Honble Supreme Court dealt with a similar case where the credit was wrongly taken and as recorded in para-4, the entire amount was also paid back. Hence, I find no difference in the fact situation between the present case and the case of Ind-Swift Laboratories Ltd. in so far as the wrong availment of credit and subsequent reversal/pay back in the context of the issue of charging of interest. In fact, the Honble Supreme Court held that interest is chargeable even if cenvat credit has only been wrongly taken and not utilized in view of the expression used in the Rules taken or utilized. As such, I am of the considered view that the ratio of the decision of the Honble Supreme Court in the case of Ind-Swift Laboratories Ltd. (supra) applies in the case at hand. Consequently, I hold that the appellants are required to pay the interest as determined by the original authority. As regards the

penal liability, I find that the expression used in the Rules 12 and 13 of the Cenvat Credit Rules, 2002, in force at the material time, is the same as for availing of cenvat credit wrongly is concerned. However, it is not a case, which would come under the category of Rule 13(ii), as it is not a case of fraud, mis-statement etc. Hence, I determine a penalty of Rs. 5000/- under Rule 13(1) instead of Rs. 10,000/- adjudged as penalty by the original authority.

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6. The Ld. Advocate states that the issue involved in this appeal is chargeability of interest in respect of differential amount paid for inputs removed as such. This case is covered by Rule 3(4) of the Cenvat Credit Rules, 2002, as applicable at the material time. The Ld. Advocate states that earlier provision was to pay the amount as payable on the transaction value which was paid by the appellants. But there was a change of Rule subsequently for reversal of equal amount of credit, which the appellants have done before issue of show cause notice on being pointed out.

7. In this case, I find that initially credit was taken and hence this is not a case of wrong availment of credit. In a case of payment of differential amount under Rule 3(4) of the Cenvat Credit Rules, 2002, there appears to be no provision of charging of interest nor is the Ld. DR able to show any such provision. Hence, I am of the view that no interest is chargeable in this case though the lower appellate authority has come to the same conclusion for a different reason.

8. As regards the penal liability, the case would be covered under the provision of Rule 13(1) of Cenvat Credit Rules, 2002 as there is a contravention of Rule 3(4) in as much as the entire amount of credit as required under the amended provision was not reversed initially. For such contravention, which was not on account of fraud, mis-statement, collusion etc., I determine a penalty of Rs. 5,000/- as against the penalty of Rs. 10,000/- earlier determined by the original authority.

9. Both the appeals are disposed of granting partial relief as indicated above.