[2016] 68 taxmann.com 252 (New Delhi - CESTAT)

CESTAT, NEW DELHI BENCH

Mahindra & Mahindra Ltd.

Vs.

Commissioner of Central Excise, Jaipur-I

S.K. MOHANTY, JUDICIAL MEMBER
AND B. RAVICHANDRAN, TECHNICAL MEMBER
FINAL ORDER NO. 50863/2016
APPEAL NO. E/1167 OF 2007
FEBRUARY 17, 2016

CASE REVIEW

Chandrapur Magnet Wires (P) Ltd. v. *Collector of Central Excise* 1996 taxmann.com 736 (SC) (para 5); *Mercedes Benz India (P) Ltd.* v. *CCE* [Final Order No. A/2166/2015-WZB/EB, dated 16-7-2015] (para 5); *Franco Italian Co. (P.) Ltd.* v. *CCE* 2000 taxmann.com 360 (CEGAT-New Delhi) (para 5); *Hello Minerals Water (P) Ltd.* v. *Union of India* 2004 (174) ELT 422 (All.) (para 5) and *CCE & C* v. *Precot Meridian Ltd.* 2015 (325) ELT 234 (SC) (para 5) *relied on.*

CASES REFERRED TO

Chandrapur Magnet Wires (P) Ltd. v. *Collector of Central Excise* 1996 taxmann.com 736 (SC) (para 5), *Mercedes Benz India (P) Ltd.* v. *CCE* [Final Order No. A/2166/2015-WZB/EB, dated 16-7-2015] (para 5), *Franco Italian Co. (P.) Ltd.* v. *CCE* 2000 taxmann.com 360 (CEGAT-New Delhi) (para 5), *Hello Minerals Water (P) Ltd.* v. *Union of India* 2004 (174) ELT 422 (All.) (para 5) and *CCE & C* v. *Precot Meridian Ltd.* 2015 (325) ELT 234 (SC) (para 5).

Amit Jain, Advocate *for the Appellant.* **Govind Dixit**, Authorized Representative (DR) *for the Respondent.*

ORDER

B. Ravichandran, Technical Member - The present appeal is against order dated 29/01/2007 of Commissioner of Central Excise, Jaipur-I. The appellants are engaged in the manufacture of tractors liable to Central Excise duty. They were availing Cenvat credit of education cess paid on the inputs used by them in the manufacture of tractors. The tractors manufactured by the appellants are exempted from payment of excise duty *vide* Notification No. 23/2004-CE dated 09/07/2004. However, a cess of 1/8% adv. is leviable in terms of notification issued under Industries (Development and Regulation) Act,

1951, in respect of tractors having engine capacity of above 1800 CC. Tractors having engine capacity less than 1800 CC are not liable to such cess. Appellants are engaged in manufacture of both type of tractors and were using common inputs without maintaining separate accounts for receipt and consumption of these inputs. Invoking the provisions of Rule 6(3)(b) of Cenvat Credit Rules, 2004 proceedings were initiated against the appellant to recover 10% of value of the exempted tractors. The Original Authority *vide* the impugned order confirmed a demand of Rs. 2,68,25,330/- and imposed a penalty of an equivalent amount on the appellants. Aggrieved by the said order, the appellants filed this appeal.

2. The learned Counsel for the appellant Shri Amit Jain submitted that the impugned order is legally unsustainable, lacking in judicial discipline and contrary to various judgments of the Tribunal. All the tractors manufactured by the appellants are exempted from Central Excise duty. Industrial cess is leviable on the tractors with engine capacity of above 1800 CC and accordingly Education cess of 2% on such industrial cess is payable in terms of Section 93 of the Finance Act, 2004. Against Rs. 400/- to 500/- as liability towards education cess on a tractor the present demand confirmed is for an amount of Rs. 26,000/- of Cenvat credit on inputs per tractor. The learned Counsel reiterated that demand of 10% value of exempted tractors is legally unsustainable as they have not taken any credit of excise duty on these inputs. The credit of education cess paid on inputs availed by them has also been reversed proportionate to the clearance of tractors of engine capacity below 1800 CC which do not attract industrial cess as well as education cess. They have reversed an amount of Rs. 7,17,581/- as proportionate credit of education cess for the period July 2004 to August 2005 attributable to the tractors below 1800 CC. This fact has been admitted in the show cause notice issued by the Department. Such being the fact, there is no justification at all to demand 10% of amount on the value of tractors (below 1800 CC) invoking Rule 6 of the Cenvat Credit Rules. Learned Counsel relied on various case laws in support of his submission. He submitted that reversal of proportionate credit of educational cess attributable to the tractors of less than 1800 CC capacity is sufficient compliance of the conditions of Rule 6 and there could be no further liability on the appellant.

3. The learned AR Shri Govind Dixit reiterated the findings in the impugned order. He further submitted that the appellants did not maintain separate accounts as required by the Rule 6 and reversal, if any, subsequent to the clearance of exempted goods will not be considered as sufficient compliance of the said provisions. He submitted that the impugned order correctly invoked the provisions of Rule 6(3)(b).

4. We have heard both the sides and examined the appeal records. The point for decision in this appeal is whether or not the appellants are liable to pay an amount equal to 10% of the value of tractors of engine capacity below 1800 CC when they have availed Cenvat credit of educational cess on common inputs without maintaining separate records. We have perused the impugned order. The Original Authority observed that industrial cess and education cess being paid are in the nature of excise duty only. The appellants have to maintain separate accounts for receipt and consumption of the inputs which are common for different type of tractors. Since the appellants failed to do so they are liable to pay 10% of the total price of exempted final products. First of all, we noticed that in the present case there is no credit of Central Excise duty availed by the appellants on the common inputs. The only

credit availed is education cess paid on such common inputs. The final products are of two categories-tractors with engine capacity of above 1800 CC or below 1800 CC. Industrial cess is leviable on the tractors with capacity of above 1800 CC. Education cess is payable on such industrial cess. The appellants utilized the credit of education cess availed on inputs to discharge education cess on tractors of above 1800 CC. There is no industrial cess or education cess on the tractors of below 1800 CC. Accordingly they calculated the proportionate credit of education cess availed on common inputs and reversed the same. We find there is no dispute on the fact of such reversal which has been admitted in the show cause notice itself. In spite of such reversal, the appellants were called upon to pay an amount equal to 10% of the total price of exempted tractors invoking Rule 6(3)(b) of the Cenvat Credit Rules, 2004. We find such a demand is not legally sustainable as already held in various decisions of this Tribunal and as affirmed by the Hon'ble Supreme Court.

5. The Hon'ble Supreme Court in *Chandrapur Magnet Wires (P) Ltd.* v. *Collector of Central Excise* 1996 taxmann.com 736 held that if the debit is made of the credit availed earlier it will amount to non-availment of such credit. We find though the Original Authority examined the said decision of the Hon'ble Supreme Court he distinguished the same on the ground that reversal of proportionate credit of education cess for a particular period was made much later after the clearance of exempted goods and hence the above decision will not apply. However, we find such distinction is not based on the ratio followed in various decisions. In *Mercedes Benz India (P) Ltd.* v. *CCE* [Final Order No. A/2166/2015-WZB/EB, dated 16-7-2015]. The Tribunal held the Revenue could not insist the appellant to avail a particular option under Rule 6. When the appellant calculated the amount to be reversed, though belatedly and the compliance of conditions prescribed under Rule 6(3)(ii), read with Rule (3A) of Rule 6 is claimed, a demand under Rule 6(3) for an amount equal to a percentage of the exempted goods is not sustainable. In *Franco Italian Co. (P.) Ltd.* v. *CCE* 2000 taxmann.com 360 (CEGAT-New Delhi), the Tribunal held reversal of Modvat credit taken with regard to inputs if reversed the manufacturer could avail the eligible exemption as if the credit was not taken. In *Hello Minerals Water (P) Ltd.* v. *Union of India* 2004 (174) ELT 422 (All.), the Hon'ble High Court of Allahabad held that reversal of credit made even subsequent to the clearance of final products is sufficient compliance to conclude that no credit was taken. In *CCE & C* v. *Precot Meridian Ltd.* 2015 (325) ELT 234 (SC), the Hon'ble Supreme Court confirmed the view of the Tribunal in *Franco Italian Co. (P.) Ltd*. (*supra*) and Hon'ble Allahabad High Court decision in *Hello Minerals Water (P) Ltd.* (I) (*supra*). This decision of the Hon'ble Supreme Court is the latest in the series of decisions by the Tribunal, Hon'ble High Court and the Hon'ble Supreme Court on this matter.

6. In view of the legal position as held in the various judicial pronouncements, as above and the analysis made herein above, we find that the impugned order is not legally sustainable. Accordingly, the same is set aside and the appeal is allowed.