IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH AT CHENNAI
[COURT : Single Member 3 B3]

Appeal No.: E/40013/2018

[Arising out of Order-in-Appeal No. 214/2017 (CTA-I) dated 09.10.2017 passed by the Commissioner of G.S.T. & Central Excise (Appeals-I), Chennai]

M/s. Sathyam Auto Engg. (P) Ltd., **: Appellant**
(Formerly 'M/s. Sathyam Press Components'),
221, SIDCO Industrial Estate,
North Phase, Ambattur,
Chennai – 600 098

Versus

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai North Commissionerate

Appearance:-
Shri. G. Natarajan, Advocate
for the Appellant
Shri. L. Nandakumar, AC (AR)
for the Respondent

CORAM:
Hon'ble Shri P. Dinesha, Member (Judicial)

Date of Hearing: 19.12.2018
Date of Pronouncement: 21.12.2018

Final Order No. 43163 / 2018

The appellant is a manufacturer of parts and accessories of Motor Vehicles. It is the case of the Revenue that during Audit for the year 2010-11, the appellant had availed CENVAT Credit on the capital goods and also claimed depreciation on the same under Section 32 of the Income Tax Act, 1961 which was in violation of

Rule 4(4) of the CENVAT Credit Rules (CCR), 2004 and that the appellant had availed Credit of Education Cess on CVD and Secondary and Higher Education Cess on CVD during the impugned period in contravention of Rule 3(1) of CCR, 2004.

2. Accordingly, a Show Cause Notice dated 10.08.2015 was issued proposing recovery of Credit availed on capital goods amounting to Rs. 18,94,608/- and Rs. 39,405/-; both with applicable interests and penalties. After due process of law, the adjudicating authority vide Order-in-Original dated 30.09.2016 confirmed the recovery of Credit of Rs. 16,15,626/- after re-working the same, Credit of Rs. 39,405/- along with interests and penalties, as proposed. The first appellate authority having rejected the appeal of the assessee vide impugned Order-in-Appeal No. 214/2017 (CTA-I) dated 09.10.2017, the assessee has come in appeal before this forum.

3. Today when the matter was taken up for hearing, Ld. Advocate Shri. G. Natarajan appeared for the assessee/appellant and mainly contended that when the mistake as to the claiming of deduction was pointed out, the appellant had filed a revised income tax return for the assessment year 2013-14 i.e., for the next year wherein, its claim for deduction was withdrawn. He also submitted that based on the appellant's revised return, an Order of rectification was passed under Section 154 of the Income Tax Act and a demand

was raised thereafter, under Section 156 ibid. In this context, he placed reliance on the decision of the Hon'ble High Court of Madras in the cases of :

(i) *M/s. S. L. Lumax Ltd. Vs. Commissioner of Central Excise, Chennai-IV – 2016 (337) E.L.T. 368 (Mad.);* and

(ii) *M/s. Cassel Research Laboratories Pvt. Ltd., Chennai Vs. CESTAT, Chennai & Anor. in C.M.A. No. 1149/2017 and C.M.P. No. 5692/2017 dated 10.04.2017* ;

4. *Per contra*, Ld. AC (AR) Shri. L. Nandakumar appearing for the Revenue supported the findings of the lower authorities.

5. I have heard the rival contentions, perused the documents placed on record and have also gone through the binding decisions of the Hon'ble jurisdictional High Court.

6.1 The relevant observations of the Hon'ble High Court in the case of *M/s. S. L. Lumax Ltd. (supra)* are as under :

> ***"17.*** *From the facts narrated above, it can be seen that the appellant, though entitled to one of the two benefits, availed both the benefits. After detection by the Preventive Unit, the appellant chose to file an application for rectification under Section 154 of the Act as well as revised returns in respect of the Assessment years 1999-2000 and 2000-2001. They were accepted. Insofar as the Assessment year 1998-99 is concerned, the time-limit for filing a revised return had already expired and the attempt of the appellant to file application for rectification under Section 154 of the Act failed up to the Supreme Court.*
>
> ***18.*** *In simple terms the assessee started up with a claim for two benefits and ended up with losing both the benefits. Therefore, the question is as to whether at least after the appellant realised his mistake and had foregone one of the benefits the appellant should still be penalized? The answer to this question would be an emphatic no. It is true that only after detection by the Preventive Unit, the appellant attempted to withdraw one of the two benefits. But the mistake has been explained by the assessee on the ground that their registered office was located in New Delhi and their factory was located in Tamil Nadu. The calculation of depreciation in so far as it relates to the duty component on which*

Modvat Credit had already been claimed, is certainly a tedious process. It does not mean that the appellant can have the licence to commit a mistake."

6.2 Further, the relevant observations of the Hon'ble High Court in the case of *M/s. Cassel Research Laboratories Pvt. Ltd. (supra)* are as under :

"3. The impugned order would show that the Tribunal rejected the appeal on the sole ground that no evidence had been placed before it by the appellant/assessee to substantiate its stand that depreciation claimed on capital goods contrary to Rule 4(4) of the CENVAT Credit Rules, 2004 had been reversed.

4. Both the counsels are agreed that, since, the assessment was made under Section 143(1) of the Income Tax Act, 1961, in so far as this aspect of the matter is concerned, the only evidence in a situation such as this, which, could have been adduced, was, a copy of the return accompanied by the requisite receipt.

5. It is not disputed by Ms. Hemalatha, who appears for the Revenue, that such evidence was placed before the Tribunal. Therefore, both the counsels are agreed that the impugned Judgement and order of the Tribunal needs to be set aside so a decision on merits can be rendered in the matter.

6. Accordingly, the impugned Judgement and order is set aside, with a direction to the Tribunal to decide the appeal of the appellant/assessee on merits.

7. The captioned appeal, is, accordingly, allowed. Resultantly, pending miscellaneous petition shall stand closed. There shall, however, be no order as to costs."

7. The documents placed on record namely, the Demand Notice under Section 156 of the Income Tax Act after taking cognizance of the revised return for the assessment year 2013-14, would satisfy the legal requirements of law. Further, the fact that the revised return was acted upon by the Income Tax Department and a consequent demand was raised under Section 156 ibid even though for the

subsequent period, evidences the fact that the wrong claim made by the assessee during the previous year was wiped out thereby entitling the assessee to the benefit of availing CENVAT Credit of duty on the capital goods.

8. In view of the above, this ground of the appeal is allowed.

9. With regard to the second issue of allegation of availing Credit of Education Cess and Secondary and Higher Education Cess on CVD in contravention of Rule 3(1) of CCR, it was submitted by the Ld. Advocate for the appellant that as per Rule 3(1)(vii) the Credit of Additional Duty of Customs (CVD) equivalent to the duty of excise specified in Clauses (i), (ii), (iii), (iv), (v), (vi) & (vi)(a) are available; that Clauses (vi) and (vi)(a) refer to Education Cess and Secondary and Higher Education Cess on excise duties; that when similar goods are imported, the above cesses are payable on CVD also and by virtue of the provision of Rule 3(1)(vii), the Credit of Education Cess and Secondary and Higher Education Cess paid on imported goods is entitled for credit; that therefore, the denial by the lower authorities without any reason is incorrect.

10. *Per contra*, Ld. AC (AR) Shri. L. Nandakumar for the Revenue supported the findings of the lower authorities.

11. I have gone through both the Order-in-Original as well as the impugned Order.

12. I find that there is no reason given by the authorities below. I find force in the contentions of the Ld. Advocate. Rule 3(1)(vii) specifically allows the manufacturer or producer of final products to avail Credit including Education Cess on excisable goods and the Secondary and Higher Education Cess on excisable goods and the claim of the assessee, therefore, appears to be correct. The denial, if at all, of the CENVAT Credit, could only be in accordance with the provisions of law for any violation or contravention, etc. The authorities having not pointed out any such thing, the denial is held to be incorrect and unsustainable for which reason, the same is set aside.

13. This ground of the appeal is also allowed.

14. The appeal stands allowed with consequential benefits, if any, as per law.

*(Pronounced in open court on **21.12.2018**)*

(P. Dinesha)
Member (Judicial)

Sdd