

Central Excise Appeal No. 12 of 2011

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Central Excise Appeal No. 12 of 2011(O&M)

Date of decision: 23.5.2011

M/s V.G.Steel Industry

...Appellant

Versus

Commissioner of Central Excise

....Respondent

**CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL,
ACTING CHIEF JUSTICE.**

HON'BLE MR.JUSTICE AJAY KUMAR MITTAL

Present: Mr. Jagmohan Bansal, Advocate for the appellant.

Mr. Susheel Gautam, Advocate for
Mr. Gurpreet Singh, Senior Panel Counsel (indirect taxation)
for respondent.

ADARSH KUMAR GOEL, ACJ.

1. This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 against order dated 6.5.2010 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi claiming following substantial questions of law:-

“i) Whether the appellant is entitled to cenvat credit on the basis of supplementary invoice when payment of duty is not disputed?

ii) Whether benefit of cenvat credit on the basis of supplementary invoice can be denied only on account that supplier was not liable to pay duty?

iii) Whether benefit of cenvat can be denied to appellant when duty was paid by supplier on account of

demand created by the department?

iv) Whether the impugned order is perverse and contrary to the facts?”

2. The assessee claimed cenvat credit to the extent of duty paid on purchase of inputs. The same was disallowed on the ground that duty paid on purchase of inputs was in excess of duty due and the benefit could be admissible only to the extent of duty due. The order of Adjudicating Authority has been affirmed by the Commissioner (Appeals) as well as by the Tribunal. The Tribunal observed as under:-

“4. The law on the point that the manufacturer can avail the Modvat Credit only to the extent of the duty paid on the inputs purchased is well settled. In the absence of the inputs being subjected to duty payment question of availing modvat credit by the manufacturer procuring such inputs does not arise, once the authorities had held that the supplier of the inputs was not subjected to the duty payment, question of appellants seeking to avail modvat credit in respect of inputs so supplied by the supplier cannot arise.

5. In case the supplier had paid the duty wrongly or by mistake, that would only entitle the supplier to seek refund of such amount. But that by itself cannot create any right in favour of the appellants who had procured such duty free inputs. The contentions canvassed as above, on behalf of the respondents are well found and,

therefore, we do not find any fault in the impugned order.

Therefore, the appeal is liable to be dismissed and is accordingly, dismissed.”

3. We have heard learned counsel for the parties.

5. Learned counsel for the appellant submits that even if the duty has been paid in excess of the amount finally held to be payable, unless the excess duty paid has been refunded, the assessee could claim cenvat credit as the department could not get the duty twice. Reliance has been placed on order of this Court dated 22.7.2010 in **CEA No.42 of 2010 Commissioner Central Excise, Chandigarh Vs. M/s Guwahati Carbons Ltd.** wherein after referring to earlier judgments of this Court in **CCE V. Ranbaxy Labs Ltd. [2006] 203 ELT 213** and **CCE V. Swaraj Automotives Ltd. [2002] 139 ELT 504** and judgment of Madras High Court in **CCE V. CEGAT, Chennai [2006] 202 ELT 753** the plea of the assessee was upheld. Learned counsel for the respondent is unable to distinguish the applicability of the judgment relied upon on behalf of the appellant.

6. In view of above, we answer the questions raised in favour of the assessee. The appeal is allowed.

(Adarsh Kumar Goel)
Acting Chief Justice

May 23, 2011
Pka

(Ajay Kumar Mittal)
Judge