

Flash Forge Ltd. Vs. the Commissioner of Central

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT

Decided On : Nov-16-2007

Reported in : (2008)(126)ECC82

Judge : S Peeran, T J Members

Appellant : Flash Forge Ltd.

Respondent : The Commissioner of Central

Judgement :

1. This appeal arises from OIA No. 164/05 CE dated 30th December 05 by which the Commissioner (Appeals) Visak has confirmed OIO No. 90/03-04 dated 30th March 04 passed by Additional Commissioner of Central Excise. He has modified the Additional Commissioner's order only to the extent of reducing the redemption fine of seized goods to Rs. 15 lakhs.

The Order is under challenge. The Original Authority confirmed demands of Rs. 13,51,828/- in terms of proviso to Section 11A(1) of Central Excise Act, 1944 read with Rule 12 & 9 of CE Rules. He has also imposed like sum as penalty under Section 11AC of Central Excise Act. The goods were also seized and released on redemption fine. There are also penalties imposed in the matter which has been confirmed by the Commissioner (Appeals).

2. The brief facts are that the appellants are manufacturers of pipe fitting and forging falling under Chapter Sub-heading No 7307.00 and 7308.90 of Central

Excise Tariff Act, 1985 and were availing SSI exemption from payment of whole of duty of excise for clearances up to rupees Rs one crore. The department on information and on investigation found that the appellants had not reversed/paid the amount equivalent to Cenvat credit on inputs lying in stock and inputs contained in finished and semi-finished goods lying in stock as on 1.3.03, therefore, the goods were seized and proceedings were initiated. The entire seized documents have been examined by both the authorities and the allegation made in the show cause notice with regard to non-reversal of Cenvat credit on the inputs has been confirmed. The appellants have filed miscellaneous application raising legal grounds.

3. We have heard both sides on this miscellaneous application and seen the reply filed by the Commissioner. The counsel contends that the grounds are legal in nature in as much as they were eligible for the benefit of time bar as there was no suppression of facts and the details were recorded in the RT 12 returns. Learned Counsel submits that the demands are within time but as there was no suppression of facts, the question of imposing like sum as penalty under Section 11AC of the Act does not arise. He also contends that confiscation was not required to be done, as there was no violation of any Central Excise rules. The question of applying Section 25 of the CE rules does not apply as the contravention pertains to Cenvat Credit rules.

4. Learned DR opposes the prayer for allowing these grounds on the ground that these are fresh grounds and they are in the nature of examination of facts. They are not legal grounds and these grounds cannot be entertained at this stage.

5. Learned Counsel submits that he has filed additional documents which are all extracts of RT 12 which had been filed with the department. He submits that these documents will change the nature of the conclusion of the case, if they are examined by the authorities. His prayer is for remand of the matter to the Original Authority so that they can examine that they have not irregularly availed the Cenvat. He also submits that penalty proceedings under Section 11AC is not justified.

6. We have carefully considered the submissions and find that the appellants are relying on certain statutory documents, RT 12 returns had been submitted to the department regularly. The grounds raised are legal in nature and therefore the miscellaneous application is allowed.

7. The short question required for determination is as to whether the appellants were justified in availing Cenvat credit in respect of inputs lying in the stock. However, he does not challenge the liability to reverse the credit of Rs 13,51,828/-. As there is no contest with regard to the irregular availment of Cenvat credit, duty amount demanded is confirmed. However, the aspect pertaining to the wrong confiscation of goods and non-levy of penalty has not been examined by the authorities in the light of the grounds now raised by the appellants. This is the only ground on which relief is claimed by the appellants in the interest of justice. The grounds now raised are required to be examined by the Original authority. Therefore, the matter is remanded to the Original Authority to examine the plea that penalty, is not leviable under Section 11AC, as there was no suppression of facts and that the goods are also not confiscable as pleaded. The Original Authority shall hear the appellants and pass an appropriate speaking order within four months from the receipt of this order. The appeal is remanded on the short question as stated supra.

The confirmation of penalty and the confiscation of goods is set aside and matter remanded for denovo.

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