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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Mar-11-2010

Judge : The Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : Excise Appeal No. 677 of 2008-SM(BR)

Appellant : C.C.E., Chandigarh.

Respondent : M/S. Samtel Electron Devices

Advocate for Pet/Ap. : Shri S.K. Bhaskar, DR for the Appellants. Shri Ajay Jain, Advocate for the Respondent

Judgement :

Per M. Veeraiyan:

This is an appeal by the Department against the order of the Commissioner (Appeals) No. 63/CE/CHD/2008 dated 21.1.08.

2. Heard both sides.

3. The relevant facts, in brief, are that the respondent received capital goods in their factory at Parwanoo, Dist. Solan unit during the period February,1996 to July, 1996 and December, 1996 and took modvat credit under Rules 57Q. The respondent could not install the same and hence the same were removed from the factory in February, 1999. The respondent also had a unit at Ghaziabad. The

respondents informed the jurisdictional Central Excise authority and removed the capital goods to the unit in Ghaziabad and while clearing the goods, they paid duty amounting to credit actually taken by them at the time of receipt of the goods. It is also claimed that after receiving the goods in Ghaziabad unit, they have taken the credit of duty, paid by the Parwanoo factory. Show cause notice was issued alleging that under Rule 57S(1)(ii) the respondent was required to pay at a higher rate applicable at the time of clearance of the goods treating the said capital goods as if manufactured by their unit at Parwanoo. Original authority accordingly, confirmed the demand of differential duty amounting to Rs.1,65,544/- along with interest and imposed equal amount as penalty. Commissioner (Appeals), on appeal by the party following the decision of the Tribunal in the case of CCE, Goa vs. Polyset Plastics Ltd. reported in 2007 (210) ELT 577 (Tri-Mum.) allowed the appeal of the party. Hence, the department is in appeal.

4. Learned DR submits that during the relevant time the respondents have brought the capital goods and having not installed the same and having not utilised the same for intended purpose and having removed the same are required to pay the duty on the said goods as if manufactured and cleared by their Parwanoo unit. In view of the above, he submits that order of the Commissioner (Appeals) should be set aside and order of the original authority should be restored.

5.1 Learned Advocate for the respondent submits that due to unavoidable circumstances, the capital goods could not be installed and utilised by Parwanoo unit. However, the same have been removed to the factory of the same manufacturer (same legal entity) and same has been used for the intended purpose inasmuch as the goods have been removed from one of their units of the same manufacturer to their other unit i.e. of the same manufacturer. In the given circumstances, there is no jurisdiction to treat the capital goods as if manufactured in their Parwanoo unit and he seeks to upheld the order of the Commissioner (Appeals).

5.2 Alternatively, he also submits that since the removal from their Parwanoo unit to the Ghaziabad unit was duly intimated to the jurisdictional Excise Authorities, the show cause notice for demand of duty dated 31.10.2002 is clearly time barred.

He also submits that if an higher amount of duty was paid at the time of clearance from their Parwanoo factory, the same was immediately available to their Ghaziabad unit as credit and therefore it is a clear case of revenue neutrality and on this ground also there is no scope for invoking the extended period of limitation and holding that the removal was intended to evade the duty. He also relied on the decision of the Tribunal in the case of Hindustan Zinc Ltd. vs. CCE, Jaipur II, reported in 2008 (232) ELT 687 (Tri-Del.) and the decision of the Tribunal in the case of P.T.C. Industries Ltd. vs. Commissioner of Central Excise, Jaipur I reported in 2003 (159) ELT 1046 (Tri- Del).

6. I have carefully considered the submissions from both sides. Undisputedly, the respondent is a legal entity, having more than one unit at different locations. The capital goods procured by one unit stands used by the second unit though after a gap of few years. It is also not in dispute that the respondents have removed the capital goods after intimation to the Department as recorded by the original authority. Therefore, there is no intention on the part of the respondents to avail the benefit irregularly. Further, it is also not disputed that if the higher amount was paid at the time of removal from their Parwanoo factory, the respondent was entitled to the said higher amount as credit and therefore, it is clear case of revenue neutrality. In addition to above, it is noticed that Rule 57 clearly permits the capital goods in respect of credit of specific duty been allowed under Rule 57Q may be used in the factory of the manufacturer of final product. In the present case, it is apparent that the capital goods stands used by the manufacturer though in a different factory than the one in which the said goods were initially received.

7. In view of the above, the order of the Commissioner (Appeals) setting aside the demand and consequently the penalty does not call for any interference.

8. The appeal is, therefore, rejected.

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