IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/2327 & 137/2011-EX[SM]

(Arising out of Order-in-Appeal No. 118-CE/GZB/2011-12 dated 22/06/2011 & 205-206-CE/GZB/2010 dated 24/09/2010 both passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad)

M/s Tirupati Structurals Ltd. (in Appeal No.E/2327/2011)

Commissioner of Central Excise, Ghaziabad

(in Appeal No.E/137/2011) **Appellants**

Vs.

Commissioner of Central Excise, Ghaziabad

M/s Tirupati Structurals Ltd. **Respondents**

Appearance:

Shri Rajesh Chhibber, Advocate for Assessee
Shri Gyanendra Kumar Tripathi, Asstt. Commr. (AR), for Revenue

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 18/07/2017
Date of Decision : 18/07/2017

FINAL ORDER NO-**70776-70777 / 2018**

Per: Anil Choudhary

These appeals have been preferred by the appellant-assessee against Order-in-Appeal No. 118-CE/GZB/2011-12 dated 22/06/2011 & 205-206-CE/GZB/2010 dated 24/09/2010 both passed by Commissioner of Central Excise & Customs (Appeals), Ghaziabad.

APPEAL No.E/2327/2011-EX[SM]

2. Appellant is a manufacturer of PVC Pipes, PVC Pipes fittings and water tanks falling under Chapter 39 of the Central Excise Tariff Act, 1985. Show cause notice dated 13/09/2010 was issued for the period October'2009 to August'2010, as it appeared to revenue that the appellant have taken Cenvat credit in respect of returned goods under the provisions of Rule 16 of Central Excise Rules, 2002. Upon enquiry, the appellant informed the revenue the details of Cenvat credit taken for returned goods, during the period in question which they had also disclosed in their ER-1 returns. According to the appellant, the goods were received after rejection from the customers and returned to the factory at Sahibabad. It appeared to revenue that the appellant have actually received waste material which is not recyclable in nature and cannot be used in manufacture of goods being produced by them. As it appeared to revenue that bringing them back to the factory, was only to take credit of duty on them, which is neither identifiable nor co-relatable with the goods cleared from the factory under payment of duty. As per the provisions of Rule 16, wherein the goods on which duty has been paid at the time of removal are brought back to any

factory for being remade, refined, reconditioned or for any other reason, the assessee shall state the particulars of such receipt in his record and shall be entitled to take Cenvat credit on the duty paid, as if such goods are received as input (s) under the Cenvat credit rules, and utilize its credit.

3. The SCN proposed disallowance of Rs.4,99,617/- with interest under Rule 14 of Cenvat Credir Rules, 2004 and further penalty was proposed under Rule 15 of CCR read the Section 11 AC of the Act. Similarly, another SCN dated 05/10/2010 was issued for the period April 2008 to September 2009 on similar allegations proposing disallowance of Cenvat credit Rs.3,76,997/- along with interest and penalty as in the other SCN.

4. Both the show cause notices were adjudicated vide Order-in-Original dated 28th February, 2011 and the proposed demands were confirmed. Further, penalty of equal amount of Rs.8,76,614/- was imposed under Rule 15 of Cenvat Credit Rules read with Section 11 AC of the Act. Further penalty of Rs.5000/- was also imposed on Shri S.S. Bhatnagar, Manager Commercial, under the provision of Rule 15 of CCR. Being aggrieved, appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order dated 22/06/2011 was

pleased to drop the personal penalty on Shri S.S. Bhatnagar, Manager (Commercial) but was pleased to reject the appeal of the company and confirmed the demand along with penalty. Being aggrieved, the appellant is before this Tribunal.

5. The learned Counsel for the appellant urges that the issue is no longer res-integra. He states that under the similar facts and circumstances, this Tribunal in appellant's own case, vide Final Order No.A/51764/2015–SM–BR dated 19th May, 2015 in Appeal No.E/2760/2012, have held as follows:–

"4. Heard ld. AR for Revenue and perused the records. It is an undisputed fact that the appellant had paid the duty on the final product at the time of clearance from the factory, which was returned back as defective for accomplishing the purpose indicated in Rule 16 (1) of the Central Excise, Rules, 2002. Further, I find that upon receipt of the goods, the same have been duly reflected/ entered in the Daily Stock Account i.e. RG-1 Register maintained by the appellant. The entries have been made in the said register on the basis of the original invoices, under the cover of which the goods were initially removed from the factory. Hence, it is erroneous to assume that the goods were not identifiable and relatable to the duty paid documents and also it is not proper to conclude that no records have been maintained for return of defective goods. It is not in dispute that the Daily Stock Account has not been maintained properly by the appellant.

5. Therefore, I am of the considered view that cenvat credit taken by the appellant on such duty paid defective goods received in the factory for carrying out the processes under Rule 16(1) of the rules are eligible for

cenvat credit and accordingly, the impugned order confirming the Cenvat demand is set aside and the appeal filed by the appellant is allowed."

6. Learned A.R. for revenue relies on the impugned order.

7. Having considered the rival contentions, I find that the issue herein is squarely covered in favour of the appellants. Under similar facts and circumstances, this Tribunal categorically held that there is no basis for the allegations of the revenue that the goods or finished goods cleared by the appellant have not been received back, even except assumption and/or presumptions. Accordingly, I hold that the appellant is entitled to Cenvat credit under Rule 16(1) of Central Excise Rules, 2002. Accordingly, the impugned order is set aside. The penalty on Shri S.S. Bhatnagar the Manager (Commercial) is already set aside in the impugned order. Accordingly, the appeal is allowed. The appellant shall be entltled for consequential benefits, in accordance with law.

Appeal No.E/137/2011–EX [SM]

8. Under similar facts and circumstances revenue is in appeal against Order-in-Appeal No.205–206-CE/GZB/2010 dated 24/09/2010, by which the

Commissioner (Appeals) have allowed the appeal of the assessee, this relates to the period April, 2006 to March 2007. As the facts and circumstance of this appeal is similar to the above said Appeal No.E/2327/2011. Accordingly, in view of the aforementioned findings, this appeal filed by the Revenue is dismissed.

9. Accordingly, Appeal No. E/2327/2011 filed by the appellant is allowed and Appeal No. E/137/2011 filed by the Revenue is dismissed.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

akp