IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL No. E/60129/2013-EX[DB]

(Arising out of Order-in-Appeal No. 107-CE/APPL/MRT-I/2013 dated 31/07/2013 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-I)

M/s Kisan Sahkari Chini Mills Ltd. **Appellant**

Vs.

The Commissioner, Central Excise Commissionerate, Meerut-I

Respondent

Appearance:

Request for adjournment for Appellant
Shri Pawan Kumar Singh (Supdt.) AR for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Anil G. Shakkarwar, Member (Technical)

Date of Hearing : 21/06/2018
Date of Decision : 21/06/2018

FINAL ORDER NO **71159 / 2018**

Per: Archana Wadhwa

After rejecting the request of adjournment, we proceed to decide the appeal as the issue lies in a narrow compos. The appellants are engaged in the manufacture of sugar and were availing the benefit of Cenvat Credit of duty paid on various capital goods.

2. During the period from April, 2006 to March, 2007, the appellant cleared waste and scrap arisen out of old plant and machinery. From the show cause notice we find that such

waste and scrap is in the nature of hydraulic pump, wheels, unloader, tool bar, gear box, MS turning scrap, old bearing CI turns scrap and old GI sheets or pipes etc., Revenue by entertaining a view that the said scrap, having been arisen out of duty paid cenvatable capital goods, and as such was required to be cleared on payment of duty, initiated proceedings against them by way of issuance of a show cause notice dated 01.08.2011, by invoking the longer period of limitation. The said notice culminated into an order passed by the Original Adjudicating Authority confirming the amount of around Rs. 8.31 lakhs and imposing penalty of identical amount. The order of the Original Adjudicating Authority was upheld by Commissioner (Appeals). Hence the present appeal.

3. It is seen that the appellant took a categorical stand before the authorities below that the scrap in question is in the nature of second hand worn out collection items and not the clearance of the cenvatable capital goods as such, so as to require any reversal or Cenvat Credit on payment of duty. The demand was also assailed on the point of limitation.

4. On going through the impugned order we note that the Appellate Authority has observed that the appellant has failed to establish that this scrap has not arisen out of duty paid cenvatable items. We find no merits in the above reasoning of the Appellate Authority inasmuch as according to the well settled principal of law the “one who alleges has to prove”, it

is for the Revenue to prove that the scrap in question had arisen out of the capital goods which were the one in respect of which the appellant has availed the credit. Apart from that we also note that the scrap is in the nature of worn out items of the plant and machinery, which has arisen during the course of repair and maintenance. The Hon'ble Supreme Court in the case of Grasim Industries Limited vs. Union of India reported at 2011 (273) ELT 10 (SC) has observed that such type of scrap and waste arising from repair and maintenance of capital goods are not dutiable. It is not the Revenue's case that the entire plant and machinery stands cleared/sold by the assessee. In such a scenario we find no merits in the Revenue's case.

Apart from that we also agree with the appellant that it is not a case for invocation of longer period of limitation inasmuch as the waste and scrap was cleared on the basis of invoices and as such no mala fide can be attributed to the assessee, in the absence of any positive evidence to reflect upon any suppression or mis-statement. In view of the foregoing we set aside the impugned order and allowed the appeal with consequential relief to the appellant.

(Dictated and pronounced in Court)

Anil G. Shakkarwar)
Member (Technical)

(Archana Wadhwa)
Member (Judicial)

Ankit