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

APPEAL No.E/2364/2011-EX[DB]

(Arising out of Order-in-Original No. 10-CE/Commissioner/2011 dated 27/05/2011 passed by Commissioner of Central Excise, Kanpur)

M/s OM Glass Works Pvt. Ltd., **Appellant**

Vs.

Commissioner of Central Excise, Kanpur **Respondent**

<u>Appearance:</u>

Shri Amit Awasthi, Advocate for Appellant
Shri Rajeev Ranjan, Joint Commissioner (AR), for Respondent

<u>CORAM:</u>

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

Date of Hearing : 24/01/2018
Date of Decision : 24/01/2018

FINAL ORDER NO-70378/2018

Per: Anil G. Shakkarwar

The present appeal is arising out of Order-in-Original No. 10-CE/Commissioner/2011 dated 27/05/2011 passed by Commissioner of Central Excise, Kanpur.

2. The brief facts of the case are that the appellants were engaged in the manufacture of glass articles. Some of the final products were exempted from Central Excise duty whereas others were attracting Central Excise duty. The appellant did not maintained two separate streams for the

purpose of Rule 6 of Cenvat Credit Rules in the year 2010. After the enactment of Section 73 of the Finance Act, 2010, appellant filed application before the Assistant Commissioner, as required under said Section 73 of the Act. The Original authority considered the said application for the period up to 31.03.2008 and allowed the relief. For subsequent period, the original authority did not allow the relief, by holding that w.e.f. 01.04.2008 under Sub-rule 3A of Rule 6 of Cenvat Credit Rules, 2004, a procedure was laid down for reversal of attributable Cenvat credit going into manufacture of exempted goods. The Original authority held that the said procedure was not followed by the appellant and therefore, they were not eligible for relief for subsequent period w.e.f. 01.04.2008. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard the learned counsel for appellant. He has submitted that for the period subsequent to 01.04.2008 they have calculated Cenvat credit that was attributable to the goods which were cleared at nil rate of duty and as provided under Sub-rule 3A of Rule 6 of the said Rules, for the period from 01.04.2008 to 30.09.2009 and the same was reversed. They further, relied on the decision of Hon'ble Supreme Court in the case of Chandrapur Magnet Wires (P) Ltd. Vs CCE, Nagpur reported at 1996 (81) ELT 3 (SC) and argued that Hon'ble Supreme Court has ruled that if Cenvat credit is

taken and subsequently reversed then it is to be treated as if the credit was not availed and that by applying the said ruling, since they had reversed Cenvat credit attributable to the goods going into the removal of exempted final product along with interest thereon, it is to be treated that Cenvat credit was not availed by them and in the result they were not required to pay 5 or 10 % of the value of exempted final product.

4. Heard the learned A.R. for revenue who has supported the impugned Order-in-Original.

5. Having considered the rival contentions and on perusal of records, we find that the details about the attributable Cenvat credit availed in respect of goods which were cleared at nil rate of duty for the period from 01.04.2008 to 30.09.2009 is not available on record. Therefore, we considered it to remand the matter back to the original authority by setting aside impugned Order-in-Original with a direction that original authority shall examine the attributable credit that went into the goods attracted nil rate of duty, examine whether said credit was debited by the appellant along with due interest and if so then applying the ruling of Hon'ble Supreme Court in the case of M/s Chandrapur Magnet Wires (P) Ltd. (supra) drop further proceedings. The appellants are also directed to cooperate

during the opportunity of hearing before the Original Adjudicating Authority.

6. With the above directions, we set aside the impugned order and remand the matter back to the Original Authority.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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