IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

REGIONAL BENCH : ALLAHABAD
COURT No. I
APPEAL Nos.C/53192,53193,53194/2014-CU[DB}

S.NO	APPEAL NO.	APPELLANT	RESPONDENT	IMPUGNED ORDER
1.	C/53192/2014-CU[DB]	M/s UKB Electronics Pvt. Ltd.	Commissioner, Central Excise, Customs & Service Tax, Noida	Order-In-Original No. 65-67-COMMR-NOIDA-2013-14 dated 12.03.2014 passed by Commissioner, Customs, Central Excise & Service Tax
2.	C/53193/2014-CU[DB]	M/s UKB Electronics Pvt. Ltd.	-Do-	-Do-
3.	C/53194/2014-CU[DB]	Shri Manoj Kumar Tayal, Director	-Do-	-Do-

Appearance:

Shri Bipin Garg (Adv) & Ms Stuti Saggi (Adv) for Appellant
Shri Mohd Altaf, Assistant Commissioner (AR), for Respondent

CORAM:

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

Date of Hearing : 05/09/2018
Date of Decision : 05/09/2018

FINAL ORDER NO.**72175-72177/2018**

Per: Archana Wadhwa

All the 3 Appeals are being disposed of by a common order as the issue involved in all of them is more or less identical.

2. It is seen that demand of Rs.87,64,688/- has been denied to the DTA unit on the ground of different counts. Out of this Rs.36,13,490/- is by denying the Cenvat Credit availed on the capital goods procured domestically. Learned Advocate submits that such capital goods were utilised by them by doing job work for principal manufacturer who has discharged duty burden on the final product. For the proposition that credit will be availed for job works, in such a situation, he draws our attention to the Larger Bench's decision in the case of Sterlite Industries (I) LTD. V/s Commissioner of Central Excise, Pune reported as 2005 (183) E.L.T. 353 (Tri.- LB) as also the Hon'ble Punjab & Haryana High Court's decision in the case of Commissioner of Central Excise V/s Happy Forging Ltd. reported as 2011 (265) E.L.T. 197 (P & H).

3. However, Learned A.R. submits that the factual position i.e. whether the principal manufacturer has utilised the intermediate goods manufactured by the job workers and have paid duty on their final product is required to be examined. Similarly, the factual dispute as to whether the capital goods were installed in the factory or not are also required to be examined and verified by the Original Adjudicating Authority. Similar is the

situation in respect of the credit relatable to the capital goods procured domestically. Learned Advocate agree that all the factual discrepancies are required to be examined at the level of the Adjudicating Authority, for which purpose matter may be remanded.

3. In view of the fore going we set aside the impugned orders and remand all the three appeals to the Original Adjudicating Authority for fresh consideration. Needless to say that the appellant would be given an opportunity to put forth their case. All the issues are left open and the appellants are at liberty to contest the same before the Original Authority in denovo proceedings.

(Pronounced & Dictated in Court)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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