CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 2073 of 2011-[Division Bench]

(Arising out of Order-in-Appeal No. 167-CE/MRT-II/2011 dated 31/05/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II)

M/s Gangeshwar Spinning Mills, **.....Appellant**

(109-110 KM Stone, N.H. No.24,

Delhi-Moradabad Road, Gajroula, J.P. Nagar-244235)

VERSUS

Commissioner of Central Excise, **....Respondent**

(Meerut-II)

APPEARANCE:

Shri Pranav Mittal, Advocate for the Appellant
Shri Shiv Pratap Singh, Deputy Commissioner Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71092 / 2019

Date of Hearing : 27/02/2019
Date of Pronouncement : 18/06/2019

PER: ANIL G. SHAKKARWAR

Present appeal is directed against Order-in-Appeal No. 167-CE/MRT-II/2011 dated 31/05/2011 passed by Commissioner of Central Excise & Customs (Appeals), Meerut-II.

2. Brief facts of the case are that the appellants were working as 100% EOU and were manufacturing cotton yarn. The

appellants applied for debonding of their unit and converting the same from 100% EOU to EPCG scheme with jurisdictional Development Commissioner. Accordingly, appellants were issued with EPCG license on 26.10.2007. On 12.12.2007 jurisdictional Central Excise, Deputy Commissioner directed jurisdictional Range Superintendent to collect Rs.37,95,250/- on debonding of indigenous capital goods from the appellant. On 19.12.2007 jurisdictional Range Superintendent intimated jurisdictional Deputy Commissioner of Central Excise regarding duty deposited by the appellant and confirmed that no dues were pending against the appellant. On 26.12.2007 appellant deposited Rs.28,45,707/- in place of debit of equal amount from Cenvat account. On 30 July, 2009 revenue directed the appellant to pay differential duty of Rs.83,49,549/- which was deposited by the appellant on 20 November, 2009. Further, on 21 November, 2009 appellant deposited applicable interest of Rs.20,80,429/-. Subsequently, appellant filed application for refund of Rs.83,49,549/- and Rs.20,90,590/- totally Rs.1,04,40,139/- stating that initially they have paid correct amount of duty and differential duty demanded by department on 30 July, 2009 was unwarranted. The said claim of the appellant was rejected by the Original Adjudicating Authority through Order-in-Original dated 24.02.2011. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). Learned Commissioner (Appeals) upheld the said Order-in-Original dated 24.02.2011. Aggrieved by the said order, appellant is before this Tribunal.

3. Heard Shri Pranav Mittal learned Advocate on behalf of the appellant and Shri Shiv Pratap Singh, learned Deputy Commissioner on behalf of revenue and perused the records.

4. On perusal of impugned order, we note that learned Commissioner (Appeals) has made the following observations:-

> "On a perusal of the impugned order, it is seen that all the calculation of duty payable on the imported/indigenous capital Goods for conversion of 100% EOU status to EPCG scheme was done on self assessment basis by the appellant as per the requirement of the procedure prescribed under EXIM Policy for the purpose of the de-Bonding of 100% EOU to DTA/EPCG scheme. I further find that appellant, while self assessing their liability, erred and assessed the liability @ 5%, as in the case of indigenously procured 'capital goods' since as per the provisions laid down in CBEC Customs Manual for EPCG Scheme there is no provision for procurement of indigenous capital goods at concessional rate of duty @ 5% & the duty paid by the appellant @ 5% on indigenous capital goods for the purpose of de-bonding was not correct."

We note from page no.19 of appeal paper book which is a copy of letter dated 12.12.2007 issued by jurisdictional Central Excise, Deputy Commissioner to jurisdictional Range Superintendent directing the jurisdictional Range Superintendent that the duty is calculated and verified amounting to Rs.37,95,250/- on indigenous capital goods and the same may be got deposited by the party. We have also perused page no.20 of appeal paper book, which is letter dated

19.12.2007 issued by jurisdictional Range Superintendent to jurisdictional Central Excise, Deputy Commissioner stating inter-alia that the said amount of Rs.37,95,250/- was paid by the appellant and there were no dues pending against the appellant. Therefore, we note that the observations of learned Commissioner (Appeals) that calculation of duty payable on the indigenous capital goods for conversion of 100% EOU to EPCG scheme was done on self assessment basis are contrary to the fact of the case. We, therefore, hold that impugned order is not sustainable and we set aside the same and remand the matter to learned Commissioner (Appeals) to decide the matter afresh by taking into consideration copies of said two letters referred to above. Appellant is directed to make available the copies of said two letters before the learned Commissioner (Appeals) for deciding the matter.

5. In above terms, appeal is allowed by way of remand.

(Pronounced in open court on-18/06/2019)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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