CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 70785 of 2016-EX[DB]

(Arising out of Order-in-Appeal No. 01/Comm/CEX/GZB/2016-17 dated 18/04/2016 passed by Commissioner of Central Excise & Customs, Ghaziabad)

M/s Hindon Forge Pvt. Ltd., ...Appellant

(C-173, Site-1 Industrial Area, B.S. Road, Ghaziabad)

VERSUS

Commissioner of Central Excise, ...Respondent

(Ghaziabad)

APPEARANCE:

Shri Prabhat Kumar, 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.-71112/2019

Date of Hearing : 23/05/2019
Date of Decision : 23/05/2019

PER: ARCHANA WADHWA

After hearing both the sides duly represented by Shri Prabhat Kumar learned Advocate for the appellant and learned Authorised Representative Shri Sandeep Kumar Singh, Deputy Commissioner for the revenue, we note that the appellants are engaged in the manufacture of Forged Blanks of stainless steel of non alloy steel and Forged Blanks of alloy steel. Similarly, flanges of non-alloy steel, stainless steel are also being manufactured by them.

2. Proceedings, were initiated against them by way of issuance of show cause notice dated 19.02.2015, based upon the audit objections proposing denial of Cenvat credit of Rs.11,49,576/- on the ground that the activities undertaken by them do not amount to manufacture and as such the appellant is not entitled to avail the Cenvat credit. Further, demand of duty to the extent of Rs.84,29,767/- was proposed to be confirmed on the allegations that the entire goods sold by them on payment of duty applicable to stainless steels scrap, it has to be held that the appellants have manufactured forged blank of stainless steel only, which do not stand reflected by them in their statutory records. Further, demand of Cenvat credit of Rs.84,097/- availed by the appellant on quantity of furnace oil was sought to be recovered on the ground that the appellant was using CNG Gas as they had a pipeline for supply of the same, in which scenario there was no requirement to use the furnace oil. The proceedings so initiated against them stands culminated into the impugned order passed by the Commissioner vide which he has not found favour with the assessee's submissions on merits as also on limitation.

4. After hearing both the sides and on perusal of the impugned order, we find that Cenvat credit to the extent of Rs.11.49 lakhs stands denied to the appellant on the ground that their activity does not amounts to manufacture and as such they should not have availed the Cenvat credit. The appellant, apart

from contesting that the activity undertaken by them is manufacturing activity challenged such confirmation on the ground that in any case and in any view of the matter, their final product stands cleared on payment of duty, in which case the entire Cenvat credit availed by them stands reversed, inasmuch as, the same was used for payment of duty on the final products.

We note that through the majority decision of the Tribunal in the case of Asian Color Coated Ispat Ltd. Vs Commissioner of Central Excise reported as 2015 (317) ELT 538 (Tri-Del.) it was held that where the final product stands cleared on payment of duty, the Cenvat credit availed by the assessee cannot be denied on the ground that the activity was not covered by the definition of manufacture. As such, we find no justification for confirmation of said demand.

5. Further, demand of Rs.84.29 lakhs stands confirmed on the allegations and findings of clandestine removal which is solely based upon the duty paid by the appellant on the scrap arisen in their factory. As explained by the learned Advocate, since the appellant was manufacturing their final products of different variety i.e. stainless steel, alloys steel as also non alloy steel, scrap of different verities originated at the various stages and was collected and sold as stainless scrap at the higher rate, so as to avoid any objection by the revenue. He submits that on the said basis it cannot be concluded that the appellants have clandestinely manufactured their final product of stainless steel only.

Apart from the above, revenue has not advanced any evidence like the procurement to raw material, the actual manufacture of goods of stainless steel and clearance of the same to the buyers, who had not been identified, the transportation of the goods or receipt of consideration. Confirmation of such huge demand of duty on the basis that the scrap sold by the appellant which was actually mixed scrap, by applying the rate of duty as applicable to stainless steel scrap, is against the settled principal of law that the allegations and findings of clandestine removal are required to be upheld on the basis of sufficient, affirmative and tangible evidences for which the onus lies upon the revenue. There is not even an *iota* of evidence on record to that effect. As such, we set aside the said finding.

6. Further, a small part of the demand to the extent of Rs.84,097/- stands confirmed by denying the Cenvat credit availed by the assessee in respect of furnace oil. It stands held by the adjudicating authority that inasmuch, as the appellant was having pipeline for supply of CNG, there were no requirement of use to furnace oil in their factory. It stands explained before us that Heat treatment & preheating furnace, furnish oil is being used by the assesse, which stand has not been rebutted by revenue by production of any evidence to contrary. As such, we hold that the said demand is also not sustainable.

7. Apart from holding in favour of the assessee on merits, on all the three counts, we note that the audit took place in the

appellant's factory during the period 23rd August, 2013 to 26 August, 2013 whereas show cause notice stand issued on 19.02.2015 i.e. after the normal period of limitation. The Hon'ble Allahabad High Court in the case of Commissioner of Central Excise and Service Tax Vs Triveni Engineering Industries Ltd. reported as 2015 (317) ELT 408 (All.) has held that the show cause notice issued after 22 months from the audit conducted, is barred by the limitation as provided under proviso to Section 11A of Central Excise Act. As such, we hold that the notice is also barred by limitation.

8. In view of the foregoing, impugned order is set aside and appeal is allowed with consequential relief to the appellant, on merits as also on limitation.

(Dictated and pronounced in open court)

(Archana Wadhwa)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

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