CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 588 of 2010

(Arising out of Order-in-Appeal No. 13/2010-CE dt. 18.01.2010 passed by Commissioner Of Central Excise(Appeals), Bangalore)

M/s. Raaja Magnetics Ltd.,
No.367, Bhattarahalli,
Old Madras Road,
Bangalore – 560 049.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Bangalore-I Commissionerate,
C.R. Buildings,
Queens Road,
Bangalore 560 001.

Respondent(s)

APPEARANCE:

Mr. B. Venugopal, Advocate for the appellant.
Mr. H. Jayathirtha, Superintendent(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20768 / 2023

Date of Hearing: 01/06/2023
Date of Decision: 01/06/2023

Per : DR. D.M.MISRA

This is an appeal field against the Order-in-Appeal No.12/2010-CE dt. 18.01.2010 passed by the Commissioner of Central Excise(Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Electrical Laminations and Stampings falling under Chapter heading 83 and 85 of CETA, 1985. The appellant during the relevant period cleared inputs 'as such' from their factory to their other unit at Coimbatore by reversing the credit availed on such inputs. Alleging that the appellant has not paid duty on the transaction value of the input cleared as such, as prescribed under Rule 3(4) of CENVAT Credit Rules, 2001/2002 i.e. 115% of the cost of production/manufacture, duty amounting to Rs.2,28,093/- along with interest demanded. On adjudication, demand was confirmed with interest and penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner(Appeals) who in turn rejected the same. Hence, the present appeal.

3. At the outset, the learned advocate for the appellant submitted that the issue is no more res integra in view of the Larger Bench decision in the case of ***Eicher Tractors Vs. CCE, Jaipur*** [2005(189) ELT 131 (Tri. LB)]. He submitted that the

Larger Bench taking note of the subsequent circular issued by the Board which superseded earlier circular held that inputs cleared as such during the period, on reversing credit availed on such inputs, at the time of its receipt, is regular and in compliance with Rule 3(4) of the CENVAT Credit Rules. He has submitted that this judgment has been subsequently followed in a number of cases. In support, he has referred to the judgments in the following cases:

i. ***Micro Inks Ltd. Vs. CC&CE, Daman*** [2007(212) ELT 469 (Tri. Ahmd.)]
ii. ***Siddharth Tubes Limited Vs. CCE, Indore*** [2008(228) ELT 193 (Tri. Del.)].; which was later upheld by the Hon'ble Supreme Court as reported at 2016(342) ELT A31 (SC)]

3. Learned AR for the Revenue reiterated the findings of the learned Commissioner(Appeals).

4. Heard both sides and perused the records. The short issue involved in the present appeal is whether the appellant is required to pay duty on the transaction value of the inputs cleared as such or reversed credit availed on such inputs would be in compliance with the provision of Cenvat Credit Rules. It is not in dispute that the appellant has cleared the inputs as such to their sister concern at Coimbatore and reversed the cenvat credit equal to the amount availed at the time of receipt of inputs. The Department insisted to make payment on the value of the inputs

following Rule 8 / 9 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000. We find that this issue has been considered by the Larger Bench of the Tribunal in ***Eicher Tractors'*** case (supra). After extensively examining the clarifications / circulars issued from time to time, the Larger Bench held that reversal of credit availed on inputs cleared as such would be regular and suffice the requirement of law laid down at Rule 3(4) of CCR. It is observed as under:-

> ***6.*** *It is seen that the Board vide its circular dated 25-4-2005 has categorically said that clarifications given in this Circular supersede the earlier Circular dated 1-7-2002 . The revenue cannot argue against its own Circular, when the Board has stated that the provisions of the Rule 3(5) of the Cenvat Credit Rules, 2004 would apply in respect of the capital goods and inputs on which credit has been availed are removed as such. We may reproduce the said Rule 3(5) of the Cenvat Credit Rules, 2004 which reads as under :*
>
> > *"3(5) When inputs or capital goods, on which Cenvat credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9".*
>
> ***7.*** *In view of the said clarification and the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, we hold that the reference has to be answered in favour of the appellants. Since no other issue arises in the said matter, the appeal is allowed.*

The principle has been followed subsequently in ***Micro Inks Ltd***. and ***Siddharth Tubes Limited*** cases (supra). Thus, following the aforesaid settled principle of law, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

(Operative part of this order was pronounced in open court
on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...