CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 570 of 2009
Central Excise ROA Application No.20136 of 2020
Central Excise Misc. Application No.20173 of 2023

[Arising out of Order-in-Appeal No. 44/2009-CE dt. 30/03/2009 passed by the Commissioner of Central Excise (Appeals), Bangalore]

M/s. Sree Lakshmi Industrial Forge & Engineers Ltd. ......**Appellant**
No.89/1, JC Road,
Bangalore – 560 002.

VERSUS

Commissioner of Central Excise, Bangalore-I Commissionerate, ...**Respondent**
C R Building, Queens Road,
Bangalore – 560001.

Appearance:

Mr. M.V. Sridhar, Consultant for the appellant.

Sh. H. Jayathirtha, Superintendent (AR) for the respondent.

Coram:
Hon'ble Dr. D.M. Misra, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 21424 / 2023

Date of Hearing: 03/08/2023
Date of Decision: 22/12/2023

Per : Dr. D.M.Misra

These two miscellaneous applications are filed one for changing the cause title and one for restoration of the appeal dismissed for non-prosecution. First, we take up the miscellaneous application for restoration of the appeal dismissed by this Tribunal on 20/08/2019 for non-appearance and non-prosecution of the appeal by the appellant.

2. Learned Consultant submits that the appellant has not received the intimation of hearing of the case, since there has been a change of address after the unit has been merged with M/s. Kems Forgings Limited in the year 2011. He submits that the appellant M/s. Sree Lakshmi Industrial Forge and Engineers Ltd. admittedly not approached this Tribunal for change of cause title as well as the change of address. He submits that it was a mistake on their part in not approaching the Tribunal resulting to non-receipt of the intimation of hearing, when the appeal was taken up by this Tribunal in the year 2019.

3. In support of the second miscellaneous application, he submits that the cause title of the appellant needs to be changed in view of the certificate enclosed with miscellaneous application issued by the Registrar of Companies, Karnataka.

4. Opposing the applications, the learned AR for the Revenue vehemently argued that the appellant has been negligent in pursuing the matter before this Tribunal. Even though the appeal was filed in the year 2009, however, they have not thereafter pursued the appeal before this forum. He submits that even after merger of the appellant-company with M/s. Kems Forgings Limited w.e.f. 2011, no compliance has been made by intimating the said merger to the Tribunal thereby replacing the new address with the existing one. He submits that since it is a question of negligence on the part of the appellant, therefore, the

miscellaneous application deserves to be rejected. In support he referred to the judgment of this Tribunal in the case of ***M/s. National Information Technologies Ltd. Vs. Commissioner of Customs, Central Excise & Central GST, Bhopal – 2022 (6) TMI 163- CESTAT New Delhi***. Also he has referred to the judgment of ***Yasir Ibnu Muhammed Vs. CC, Cochin Misc. Order No. 20246/2023 dated 05.06.2023.***

5. In his rejoinder, the learned Consultant has submitted that the judgments of the Hon'ble Gujarat High Court in the case of ***Shriram Tubes Pvt. Ltd. Vs. Union of India – 2019 (368) E.L.T. 895 (Guj.)*** and ***B. Srinivas Rao Vs. Union of India – 2019 (368) E.L.T. 839 (Telangana),*** wherein the Hon'ble High Courts have restored the dismissed appeal. Further distinguishing the judgments cited by the learned AR for Revenue, the learned Consultant has submitted that the facts of the present case are different from the case of National Information Technologies Ltd. inasmuch as the appellant has got merged with M/s. Kems Forgings Limited in 2011 and thereafter they have not received any intimation by the Tribunal about the hearing. Also, since there was a change in address, the notices were not received by them. Further, he has submitted that in **Yasir Ibnu Muhammed's** case, the learned Consultant submitted that in that case the appellant was pursuing remedies in both the forum and did not disclose the High Court about the appeal pending before this Tribunal, resulting into dismissal of their application. Therefore, the said judgment is also not to be acceded.

6. The learned consultant, in explaining the reason for not attending the notices of hearing issued to the appellant, duly supported by an affidavit, submitted that the appellant's unit was merged with M/s. Kems Forgings Limited w.e.f. 2011 and the counsel, who was looking after, supposed to initiate proper action intimating the merger and change of cause title and also the address of the company with whom merger effected.

7. We find that for the mistake of the counsel in not intimating the Tribunal about the change of name and address on merger with M/s. Kems Forgings Limited, the appellant cannot be penalised. The case laws cited by the learned AR for the Revenue has been distinguished by the learned consultant and in our view, the circumstances therein are different from the present one, hence not applicable. Considering the submissions of the appellant supported by affidavit filed by the Managing Director of the company, in the interest of justice, the miscellaneous application seeking restoration of the appeal dismissed earlier for non-prosecution vide order dt. 20.08.2019 is allowed and the said order is recalled and appeal is restored to its original number. Also, the miscellaneous application seeking change of cause title from M/s. Sree Lakshmi Forge & Engineers Ltd., to M/s. Kems Forgings Ltd. on the basis of the certificate issued by the Registrar of Companies dated 14.07.2011 is allowed and the appellant's cause title is changed from M/s. Sree Lakshmi Forge & Engineers Ltd., to M/s. Kems Forgings Ltd. Registry is directed to make necessary changes regarding cause title and address in the records as well as database.

8. The miscellaneous applications are disposed of accordingly.

9. Now, coming to the merit of the appeal filed against Order-in-Appeal No.44/2009-CE dt. 30/03/2009 passed by the Commissioner of Central Excise (Appeals), Bangalore, the facts of the case are that the appellants had manufactured dies, jigs and fixtures valued at Rs.26,50,505/- and captively consumed the same during the period June 2003 to February 2004. It is alleged that the appellants are though charging the value of the said moulds, dies to respective buyers of the forgings separately but not included the same in the assessable value of the forgings, in terms of Section 4 of the Central Excise Act, 1944. Consequently, there has been a short payment of duty of Rs.4,24,081/- and proposed to be recovered from the appellant. Also, it is alleged that during the period June 2003 to November 2004, they have availed cenvat credit of Rs.5,56,999/- on the strength of invoices not consigned to them but consigned to one M/s. Southern Steel and Forgings, Peenya; hence not eligible to avail the said credit. Accordingly, a show-cause notice-cum-demand notice was issued to the appellant on 22.12.2005 for recovery of the central excise duty amounting to Rs.4,24,081/- and cenvat credit of Rs.5,56,999/- along with interest and penalty. On adjudication, the demand was confirmed with interest and equivalent penalty. Aggrieved by the said order, appellant filed appeal before the learned Commissioner (Appeals) who upheld the Order-in-Original partly holding the amortised cost of dies/blocks is includable in the value and remanded the matter for redetermination of

assessable value of forgings and to re-examine the issue of admissibility of cenvat credit. Hence the present appeal.

10.1. At the outset, the learned consultant for the appellant has submitted that the learned Commissioner (Appeals) had failed to appreciate that they have not received any additional consideration on account of dies / blocks. In support, they have enclosed the extract of account ledger for the relevant period with appeal paper book. Further, he has submitted that the learned Commissioner (Appeals) has not considered the fact that they do no manufacture the die blocks; they only manufacture the die impression, which is sunk into the dies block. This impression is used for the forgings of the products to be supplied to the customers. These dies blocks are reusable and as and when the impressions/inserts worn out, another insert or impression is used for new job. They have not recovered the cost of the dies block but cost of the impression from the customers not separately but including in the cost, which is consumable. In most of the cases, if size of the order is large and also from regular customers, they do not recover any charges and the appellant themselves bear the said cost. Thus, there is no additional consideration received from the buyers. In support, he has referred to the judgment of the Tribunal in the cases of ***Flex Industries Vs. CCE*** [1997 (91) ELT 120 (T) and ***Mutual Industries Ltd. Vs. CCE*** [2000(117) ELT 578 (T-LB)]. Further he has submitted that the tools / dies cost must be amortised over the life period and duty cannot be recovered by adding the total cost of the dies to the transaction value. He has submitted that the dies blocks are their own capital asset; hence it is subjected to depreciation of capital asset. He has submitted that since the impressions/inserts are manufactured within the factory and used in the manufacture of forgings, exemption from duty is available under Notification No.67/95-CE dt. 16.03.1995. It is his contention that thus the remand order by the Commissioner (Appeals) in this regard for verification of documents and redetermination of assessable value including amortised cost of dies is not correct.

10.2. Further the learned consultant has submitted that the learned Commissioner (Appeals) has wrongly remanded the matter to verify admissibility of cenvat credit, which was received and credit was utilised by them. The allegation of the Department that the entire consignment on which cenvat credit has been taken alleged to have not received in the factory premises of the appellant but consigned to one M/s. Southern Steel and Forgings, Peenya. It is submitted that the said allegation of the Department is not correct which they have pointed out in response to their audit objection reply to the show-cause notice and submissions made from time to time. It is submitted that initially, the goods were consigned to them by the seller M/s. Mahindra Ugine Steel Ltd., which were received in their factory and duly recorded in their stock register. Thereafter corresponding invoices raised, when the inputs were cleared to M/s. Southern Steel and Forgings Ltd., from time to time. In support, they have placed all the connected documents in availing the cenvat credit and the statements of stock of materials received in their premises (pages 32 to 61 of the appeal paper book), the corresponding invoices raised in the name of M/s. Southern Steel & Forgings Ltd. when inputs are cleared as such. Further he has submitted that since the matter has been remanded twice to the original authority, further remand would not result any justice to them. Further he has submitted that invocation of extended period is unwarranted as no fact was suppressed from the knowledge of the Department; also penalty is not imposable.

10. Learned Authorised Representative (AR) for the Revenue reiterated the findings of the learned Commissioner(Appeals).

11. Heard both sides and perused records.

12. The two issues involved in the present appeals for determination are:

i. Whether the amount of Rs.4,24,081/- being the duty short paid on account of non-inclusion of the value of dies / jigs etc. in the transaction value of the forgings is recoverable with interest and

ii. Whether cenvat credit of Rs.5,56,999/- is admissible to the appellant.

13. As far as the first issue is concerned, it is the contention of the learned consultant for the appellant that they have not received any cost from the purchaser of the forgings on account of moulds / dies etc. but the die blocks are their property and accounted as their capital assets. The inserts, which are fixed to the dies gets exhausted/consumed during the course of manufacture of forgings, whose cost is borne by them; therefore the direction of the learned Commissioner (Appeals) to calculate

the amortised cost of dies/blocks and redetermine the assessable value is incorrect. Also, the grievance of the appellant is that even though they have been claiming through evidences before the authorities below that the die blocks belong to them and the die impression/inserts got exhausted but the same was not considered. Hence, the order of the lower authorities is bad in law.

14. We find force in the contention of the learned Consultant for the appellant. Initially, in the demand notice, the entire cost of the dies / jig fixtures proposed to be included assuming that the same have been used in the manufacture of forgings and its cost has been recovered from the customers. However, no evidence has been placed in this regard in spite of two rounds of litigation before the adjudicating authority. The learned Commissioner (Appeals) has now erred in remanding the matter to examine the issue of inclusion of the amortised cost of dies in the value of the forgings without analysing the evidence on the allegation of receipt of additional cost of the dies / blocks or inserts by showing separately in the invoice without payment of duty. Also, he has failed to take note of the submission of the appellant that dies / blocks are their capital assets and inserts fitted to it get exhausted during the manufacture of forgings. Besides, the cost/value of the inserts, which are fixed with the blocks of the appellant and exhausted during the course of manufacture of forgings cannot be included as no evidence has been placed on record indicating that the same are recovered separately along with the value of the forgings. Thus, the finding of the learned Commissioner (Appeals)

remanding the matter to add the amortised cost of the dies / blocks to the transaction value of forgings is erroneous; hence cannot be sustained.

15. Regarding the admissibility of cenvat credit of Rs.5,56,999/-, we find that the invoices were raised on their account and the materials were shipped to the appellant and have been received as indicated in their material receipt register (pages 52 to 59 of the appeal paper book), the relevant transport receipts from the supplier M/s. Mahindra Intertrade Ltd. A/c of Sree Lakshmi Industrial Forge & Engineers Limited have been placed. The said goods are duly accounted for in their stock register. They have cleared the said goods later and necessary invoices are raised for clearance the goods 'as such' in favour of M/s. Southern Steel & Forgings Ltd. The receipt and corresponding clearance invoices in respect of M/s. Southern Steel & Forgings Ltd. are enclosed with the appeal (pages 32 to 51); hence it is sufficient to accept that the materials were received and utilized in the premises of the appellant.

16. In these circumstances, we do not see any reason to deny the cenvat credit on the basis of the aforesaid documents and to remand the matter to the original authority to examine the evidences enclosed, when the same had not been examined in the two rounds of adjudication before the original authority.

17. Consequently, another remand to verify the cenvat credit documents would not yield any fruitful result. In view of the above discussion, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in open court on 22.12.2023)

(Dr. D.M. Misra)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

Raja...