CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Misc. Application No. 20035 of 2024
in
Central Excise Appeal No. 2538 of 2011

And

Central Excise Appeal No. 2538 of 2011

(Arising out of Order-in-Appeal No. 305/2011 dated 31.03.2011 passed by the Commissioner of Central Excise (Appeals II), Bangalore.)

M/s. SJS Enterprises P Ltd.
#1, Talaghattapura,
Kanakapura Main Road,
Bangalore – 560 062.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Bangalore III Commissionerate,
P.B.No.5400,
C.R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

With

Central Excise Appeal No. 2539 of 2011

(Arising out of Order-in-Appeal No. 305/2011 dated 31.03.2011 passed by the Commissioner of Central Excise (Appeals II), Bangalore.)

Sivakumar,
Director, Finance,
M/s. SJS Enterprises P Ltd.
#1, Talaghattapura,
Kanakapura Main Road,
Bangalore – 560 062.

Appellant(s)

VERSUS

Commissioner of Central Excise,
Bangalore III Commissionerate,
P.B.No.5400,
C.R. Building,
Queen's Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Shri M.V. Sridhar, Consultant for the Appellant

Shri 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. 20484 - 20485 /2024

DATE OF HEARING: 06.06.2024
DATE OF DECISION: 06.06.2024

PER : DR. D.M. MISRA

This Miscellaneous Application is filed by the appellant for change in the cause title of appeal No. E/2538/2011. In view of the certificate issued by the Registrar of Companies, the appellant's name is changed from M/s. S. J. Enterprises Pvt. Ltd. to M/s. S.J. Enterprises Ltd. The Miscellaneous Application is allowed.

2. This is an appeal filed against order-in-Appeal No.305/2011 dated 31.03.2011 passed by the Commissioner of Central Excise, Bangalore.

3. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of self-adhesive labels falling under Tariff Heading No.3919 90 10 Central Excise Tariff Act, 1985. During the relevant period, the appellant availed CENVAT Credit on inputs and on all rejected materials returned under Rule 16 of the Central Excise Rules, 2002. Department alleged that the appellant had not followed the procedure laid down under Rule 16 of the Central Excise Rules, 2002. During the course of stock taking, shortages were noticed, and also they failed to include the drawings and development charges in the assessable value of the goods cleared to their customers; hence, show-cause notice was issued to them on 04.06.2009 for recovering Central Excise duty amounting to Rs.34,31,271/- along with interest and penalty for the period from May 2004 to May 2009. On adjudication, the demand was confirmed. Appellants filed an appeal before learned Commissioner (Appeals), who in turn, rejected their appeal. Hence, the present appeal.

4. At the outset, the learned Consultant for the appellant submits that there are four issues involved in confirming the demand. These are: (i) Availment of CENVAT credit amounting to Rs.33,10,644/- on rejected goods under Rule 16 of the Central Excise Rules, 2002. (ii) Demand of duty of Rs.34,944/- under Section 11A(1) of Central Excise Act, 1944 on the shortages of finished goods; (iii) Recovery of CENVAT credit amounting to Rs.33,327/- on the inputs found to be short in terms of Rule 14 of CENVAT Credit Rules, 2004; and (iv) Duty amounting to Rs.52,356/- confirmed for non-inclusion of drawings and development charges collected from their customers for the samples sold to them.

5. He submits that as far as the shortages in stocks of finished goods and inputs; and non-inclusion of development charges is concerned, considering the amount of duty confirmed being meagre, the appellants do not want to pursue the same. Further, he submits that the shortages of finished goods and raw materials noticed were due to accounting error as huge volume of goods manufactured and cleared during this period. Therefore, no *mala fide* intention is involved in such shortage of stocks, accordingly imposition of penalty is not warranted. Further, he submits that inclusion or exclusion of development charges is an issue rests on interpretation of law; therefore, penalty for short payment of duty is not warranted.

6. Arguing vehemently on the issue of demand relating to availment of CENVAT credit on rejected goods, he has submitted voluminous records correlating the rejection of the labels by the customers, its receipts in the factory against rejected invoices. After carrying out necessary rectification, the same were removed on payment of duty, equivalent to the credit availed as the process undertaken by them did not amount to manufacture. However, he fairly submits that the record/documents now placed before this Tribunal has not been produced earlier, either

before the adjudication authority or before the learned Commissioner (Appeals). He submits that the statements recorded has been analysed and submission has been made in this regard claiming that the rejected goods duly received in the factory were accounted for and after processing, cleared on payment of duty.

7. Learned Authorised Representative for the Revenue reiterated the findings of the learned Commissioner (Appeals), and he submits that documents have not been placed before the authorities below and the same cannot be considered without verification and must be placed before the authorities below.

8. Heard both sides and perused the records. The only issue remains for consideration is: whether the appellant are eligible to avail cenvat credit on the rejected goods on receipt of the same in their factory as per Rule 16 of the Central Excise Rules, 2002. The department has undisputedly initiated investigation and recorded statements, to ascertain correctness of their claim, whether the rejected goods had been received in the factory on which CENVAT credit has been availed as per Rule 16 of the Central Excise Rules, 2002. On the basis of the said statements, the authorities below had observed that the appellant had not established receipt of the rejected goods in the factory and not followed the procedure, while claiming CENVAT credit on the rejected goods. The appellant before us has placed sample documents for the relevant year, mainly the register maintained under Rule 16 of Central Excise Rules, 2002; ER- 1 Returns of April and May 2009; CENVAT credit availed on the rejected / returned goods etc., and demonstrated that the goods which were rejected and received in the factory, on which they have availed on the Rule 16 of the Central Excise Rule 2002, after rectification cleared on payment of duty. On going through the records submitted before the adjudicating authority and first

appellate authority, we do not find any such reference was made to the volume of records/documents in support of the claim that rejected goods were received in their factory and after rectification cleared on payment of duty. Therefore, it is prudent to remand the matter to the adjudicating authority to verify the records now placed before this Tribunal and also the records that will be placed during the course of hearing to ascertain the claim of the appellant that the rejected goods have been received at their factory, on which credit has been availed under Rule 16 of the Central Excise Rules, 2002 and after rectification cleared on payment of duty. Since the learned consultant for the appellant does not dispute the demands confirmed against shortages and development charges, the same is confirmed with interest; however, penalty imposed on the same is set aside.

9. We do not find any justification to impose personal penalty under Rule 26 of Central Excise Rules, 2002 as no evidence has been brought on record having personal involvement of the Director. The penalty imposed on the Director is set aside and accordingly, the appeal filed by the Director is allowed.

10. The impugned order is modified to the extent of confirming demand with interest on shortage of stock of finished goods involving duty of Rs.34,944/- shortage of inputs involving credit of Rs.33,327/- and duty of Rs.52,356/- relating to non-inclusion of drawings and development charges, with interest; however, penalty on these demands are set aside; and for re-adjudication of the demand of CENVAT credit amounting to Rs.33,10,644/- the matter is remanded to the adjudicating authority.

11. Appeals are disposed of as discussed above.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

Tr/rv