CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 20028 of 2014

(Arising out of Order-in-Appeal No. 483/2013-CE dated 16.09.2013 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Galaxy Machinery Pvt. Ltd.,
Plot No. 215/1, 4th Phase,
Bommasandra Industrial Area,
Bommasandra – Jigani Link Road,
Bangalore- 560 099.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Bangalore I Commissionerate,
Queens Road,
Bangalore – 560 001.

Respondent(s)

APPEARANCE:

Mr. Sundara Raman, Advocate for the Appellant

Mr. Sanjay Venkat, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)

Final Order No. 21099 /2024

DATE OF HEARING: 11.11.2024
DATE OF DECISION: 11.11.2024

This is an appeal filed against Order-in-Appeal No.483/2013-CE dated 16.09.2013 passed by the Commissioner of Central Excise(Appeals-I), Bangalore.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture of High Tech machineries falling under Chapter 84 of the Central Excise Tariff Act, 1985. They had manufactured and cleared one precision CNC Universal Turning Machine (CNC lathe) from their Belgaum Unit to M/s. Kunakeshwar Springs Pvt. Ltd., Pune vide invoice No.709 dated

02.02.2006 on payment of appropriate duty of Rs.2,45,551/-. The customer rejected the said goods which was received by the appellant against their Invoice No.EX-025 dated 17.07.2008. The appellant had availed credit of the duty earlier paid under Rule 16(1) of the Central Excise Rules, 2004 as if it is an input. Later, the appellant had cleared the goods after making necessary changes by adding components on payment of duty on the transaction value of the said machine at the rate applicable at the time of clearance. Alleging that the machine was not subjected to the process of manufacture; hence the appellant is required to reverse the credit availed on such returned machine under Rule 16(2) of the Central Excise Rules, 2002, show-cause notice was issued to them on 11.01.2011 for recovery of differential duty of Rs.1,62,914/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner(Appeals) who in turn rejected the same. Hence, the present appeal.

3.1. At the outset, the learned advocate for the appellant submits that the machine which was initially cleared by the appellant from Belgaum unit was rejected by the customer and hence, brought to their Bangalore Unit for re-manufacturing. The process of re-manufacturing involved dismantling the whole machinery, reassembling the various parts which included incorporating additional parts / components listed out as per para 33 of the appeal paper book thereby enhancing certain features of the said lathe machine and cleared on payment of duty on the transaction value of the lathe machine to a different party. The reason for clearing the said machine to another party was that it was re-customised according to the requirements of the said customer. He submits that it is a capital goods and it has to be manufactured according to the requirement of the customer; therefore, the rejected goods as alleged in the show-cause notice was only repaired is not correct but it is manufactured; therefore as per Rule 16(2) of the Central Excise

Rules, it attracted duty which was paid on the basis of transaction value and the rate of duty prevailing at the time of its clearance. In support, they have referred to the following judgments:-

a. ***Indian Aluminium Co. Ltd. Vs. CCE*** [2008(01) LCX 0468-In the High Court of Kerala]
b. ***Hot Line CPT Ltd. Vs. CCE, Indore*** [2015(318) ELT 141 (Tri.)]
c. ***Deepak Nitrate Ltd. Vs. CCE, Rajgad*** [2016(335) ELT 254 (SC)]
d. ***CCE, Vapi Vs. Castrol India Ltd***. [2016(339) ELT 265 (Tri.)]

3.2. On the issue of availing of cenvat credit of Rs.3371/-, the learned advocate further submits that it was taken on the demurrage charges paid to M/s. Mysore Sales International Ltd., Bangalore for storage of the goods. He submits that payment of tax has not been questioned; hence admissibility of credit disputing its classification cannot be denied.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal is whether the availment of differential cenvat credit of Rs.1,59,543/- and Rs.3371/- by the appellant under Rule 16(2) of Central Excise Rules, 2002 is justified.

7. Undisputedly the appellant had received the lathe machine cleared to a customer in Pune who rejected the same. Later, it was brought back to the factory in Bangalore and certain processes were undertaken on the machine. The central dispute is that whether the process undertaken by the appellant is manufacture as claimed by the appellant or the same does not amount to manufacture as termed by the Revenue. On going through the records, I find that the appellant after receipt of the machine, in response to the Department's query submitted that

the lathe machine is a customised capital goods and it is fabricated according to the required specifications of the customer. They contended that after the machine was received from the Pune customer, it was remanufactured by dismantling and thereafter adding certain materials / inputs enhancing its features and assembled it to make it customer-worthy. These works carried out on the lathe machine cannot be termed as process of repairing of rejected machine but results into manufacture. Also, I find that the said goods has been cleared to another customer after customising it according to his specifications. Also, on going through the list of materials appended with the appeal paper book, it is seen that certain features of the earlier machine after dismantling it had been added and as a new commodity with distinct use had emerged as a result of the processes; therefore, bringing out a new machine. Hence, the processes resulted into manufacture. In these circumstances, the payment of the duty on the transaction value of remanufactured machine is justified. Regarding the issue of admissibility to credit on demurrage charges, it is seen that the same was taken on proper tax paid invoices and leviability of tax and its classification was is not disputed; hence, availment of credit cannot be disputed.

8. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

Raja…