CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2192 of 2010

(Arising out of Order-in-Appeal No. 63/2010 CE dated 19.07.2010 passed by the Commissioner of Central Excise, Customs and Service Tax (Appeals), Cochin.)

M/s. Hykon Power Electronics (P) Ltd.,
Kuttanellur,
Trichur P.O.,
Trichur District,
Kerala – 680 014.

Appellant(s)

VERSUS

The Commissioner of Central Excise, Service Tax &Customs (Appeals),
Central Revenue Building,
I.S. Press Road,
Cochin – 682 018,
Kerala.

Respondent(s)

APPEARANCE:

None for the Appellant.
Mr. Neeraj Kumar, Superintendent (AR) for the Respondent.

CORAM: HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21244 /2024

DATE OF HEARING: 21.11.2024
DATE OF DECISION: 13.12.2024

PER : R. BHAGYA DEVI

This appeal is filed by the appellant, M/s. Hykon Power Electronics Pvt. Ltd., against Order-in-Appeal No. 63/201-CE dated 19.07.2010 passed by Commissioner (Appeals), Cochin.

2. The appellant is engaged in the manufacture of electronic equipment falling under Chapter Heading 85.04, 85.34 and 90.32 of the Central Excise Tariff Act, 1985. During the period 2004-2005, the appellant was a non-SSI unit and availed cenvat

credit on the inputs which were used in the manufacture of stabilizers, which were cleared on payment of duty. On 30.11.2004, 100 stabilizers were returned for reconditioning and return. As per Rule 16(1) of the Central Excise Rules, 2002, cenvat credit was availed on the returned goods. During the period 2005-2006, the appellant opted for the benefit of Notification No.8/2003 dated 01.03.2003 and availed the benefit of exemption from payment of duty on final clearance of goods up to Rupees one crore. In accordance with the above Notification read with Rule 11(2) of Cenvat credit Rules, 2004, the appellant on 01.04.2005 had to reverse the outstanding cenvat credit available in their books of accounts since the appellant had opted for 'Nil' payment of duty under Notification No.8/2003 dated 01.03.2003. Hence, notice was issued to reverse the cenvat credit on 92 stabilizers which were lying in stock as on 31st March 2005. The original authority dropped the demand; on appeal by the department the Commissioner (Appeals) held that Rule 11(2) clearly says that when a manufacturer opts for exemption from duty shall be required to pay an equal amount equivalent to cenvat credit, if any allowed to him in respect of inputs lying in stock or in process or contained in the final products in stock on the date when the option is exercised. The respondent reversed only the cenvat credit availed in respect of the inputs contained on those stabilizers lying in stock instead of reversing the entire credit availed on 92 numbers of stabilisers lying in stock. Thus, confirmed demand of cenvat credit of Rs.3,47,656/- and Education Cess of Rs.6,953/- under Section 11 of the Central Excise Act, 1944 along with appropriate interest under section 11AB of the Central Excise Act, 1944.

3. None appeared for the appellant. The learned counsel vide email dated 20.11.2024 has requested to decide the issue on merits based on their written submissions. It is submitted that the appellant had cleared stabilizers manufactured by him on payment of duty, out of which 100 stabilizers were found to be

defective and were returned and received back at the appellant's factory on 30.11.2004 for reconditioning, out of which 8 stabilizers were cleared on payment of duty in the same financial year 2004-05. With effect from 01.04.2005, the appellant was eligible for exemption under Notification No.8/2003 dated 01.03.2003. He stated that 47 stabilizers out of 100 stabilizers were cleared by availing exemption and the balance 45 stabilizers were thereafter cleared on payment of duty after the one crore limit was crossed. Therefore, the dispute is only with regard to 47 stabilizers cleared by availing full exemption under Notification No.8/2003 dated 01.03.2003. The contention of the department is that the amount equal to the cenvat credit taken at the time of return of these 47 stabilizers should be reversed; while the appellant's case is that once the stabilizers are returned and are manufactured, Rule 16(2) of the Central Excise Rules mandates clearance at the appropriate rate, which in this case was full exemption; hence, as per the provisions of Rule 11(2) of the Cenvat Credit Rules, 2004 only the credit taken on inputs contained in the said 47 stabilizers had to be reversed which was admittedly done.

4. The Authorized Representative (AR) submitted that the appellant had received back 100 server stabilizers on 30.11.2004 for reconditioning and availed cenvat credit of the duty paid at the time of removal on those goods as per Rule 16 of the Central Excise Rules 1944. 8 stabilizers were cleared during the same financial year on payment of Central Excise duty. On 01.04.2005, the appellant claimed full exemption from duty in terms of the Notification No.8/2003 dated 01.03.2003 but failed to reverse the credit lying in their books of account on the balance 92 stabilizers lying in stock. Instead, the appellant had reversed the cenvat credit involved in the raw materials used for the manufacturing of the said stabilizers considering them to be finished goods. Since they had contravened the provisions of Rule 11(2) of the Cenvat Credit Rules, show-cause notice was issued for reversal of credit on these 92 stabilizers, which were

returned for reconditioning and repair. The Original authority had dropped the demand without any basis. On appeal filed by the Revenue, the Commissioner (Appeals) confirmed the wrongly availed cenvat credit.

4.1 It is further submitted that as per the provisions of Rule 16 of Central Excise Rules, 1944, the cenvat credit of the duty paid on returned goods is available when it is received back for being remade, refined, re-conditioned or for any other reason and if entitled to take the credit as if such goods are received as inputs under Cenvat Credit Rules, 2004. In the present case, 100 stabilizers were returned, out of which only 8 were cleared on payment of duty after reconditioning. Therefore, the 92 stabilizers which were returned needs to be considered as inputs lying in stock; consequently, the cenvat credit availed on them needs to be reversed while opting for SSI exemption Notification No.8/2003 with effect from 01.04.2005. Hence, the Commissioner (Appeals) had rightly confirmed the demand of Rs.3,54,609/-.

5. Heard learned AR for the Revenue. The appellant as a non-SSI unit cleared stabilizers on payment of duty in the year 2004-05. On 30.11.2004, 100 stabilizers were returned for reconditioning, out of which 8 stabilizers were reconditioned and returned on payment of duty. The remaining 92 stabilizers were lying in stock. These are undisputed facts. From 01.04.2005, the appellant opted for SSI exemption vide Notification No. 8/2003 dated 01.03.2003. The only dispute here is whether the cenvat credit lying in stock needs to be reversed as on 01.04.2005 when the appellant opted for SSI exemption.

6. Let's examine the relevant Rules and the SSI exemption Notification No.8/2003 dated 01.03.2003.

Central Excise Rules, 2001

Rule 16. Credit of duty on goods returned to the factory.-

(1) Where any goods on which duty has been paid at the time of removal thereof are subsequently returned to the factory for being remade,

refined, re-conditioned or for any other reason, the assessee shall state the particulars of such return in his records and **shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2001 and utilise this credit according to the said rules.**

(2) If the process to which the goods are subjected before returning does not amount to manufacture, **the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods returned under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.**

7. When the 100 stabilizers were returned for reconditioning as per Rule 16 of Central Excise Rules, reproduced above the appellant was eligible for cenvat credit deeming the finished product as inputs as stated in the Rules "**the assessee shall state the particulars of such return in his records and shall be entitled to have CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2001 and utilise this credit according to the said rules.**"

8. The SSI exemption Notification No.8/2003 dated 01.03.2003 reproduced below under clause 2(iii) of the Notification, categorically mentioned that cenvat credit is not allowed as per the provisions under Rule 3 and Rule 11 of Cenvat Credit Rules, on the goods which are cleared without payment of duty, once they opt for SSI notification.

[Notification No. 8/2003-C.E., dated 1-3-2003] relevant provisions reproduced:

SSI Exemption to manufacturers not availing Cenvat —

In exercise of the powers conferred by sub-section (1) of section 5A of the Central Excise Act, 1944 (1 of 1944) (herein after referred to as the Central Excise Act) and in supersession of the notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 8/2002-Central Excise, dated the 1st March, 2002, published in the

Gazette of India vide number G.S.R. 129(E), dated the 1st March, 2002, the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts clearances, specified in column (2) of the Table below (hereinafter referred to as the said Table) for home consumption of excisable goods of the description specified in the Annexure appended to this notification (hereinafter referred to as the specified goods), from so much of the **aggregate of**, -

(i) the **duty of excise** specified thereon in the First Schedule to the Central Excise Tariff Act, 1985 (5 of 1986) (hereinafter referred to as the First Schedule); and

(ii) the **special duty of excise** specified thereon in the Second Schedule to the said Central Excise Tariff Act, 1985 (hereinafter referred to as the Second Schedule),

as is in excess of the amount calculated at the rate specified in the corresponding entry in column (3) of the said Table :

Provided that nothing contained in this notification shall apply to a manufacturer who has availed the exemption under notification No. 39/2001-Central Excise, dated the 31st July, 2001, published in the Gazette of India vide number G.S.R. 565 (E), dated the 31st July, 2001, in the same financial year.

Table

S. No	Value of clearances	Rate of duty
(1)	(2)	(3)
1.	First clearances up to an aggregate value not exceeding one hundred lakh rupees made on or after the 1st day of April in any financial year.	Nil
2.	All clearances of the specified goods which are used as inputs for further manufacture of any specified goods within the factory of production of the specified goods.	Nil

2. The exemption contained in this notification shall apply subject to the following conditions, namely : -

(i) a manufacturer has the option not to avail the exemption contained in this notification and instead pay the normal rate of duty on the goods cleared by him. Such option shall be exercised before effecting his first clearances at the normal rate of duty. Such option shall not be withdrawn during the remaining part of the financial year;

(ii) while exercising the option under condition (i), the manufacturer shall inform in writing to the Assistant Commissioner of Central Excise or the

Deputy Commissioner of Central Excise with a copy to the Superintendent of Central Excise giving the following particulars, namely :-

(a) name and address of the manufacturer;
(b) location/locations of factory/factories;
(c) description of inputs used in manufacture of specified goods;
(d) description of specified goods produced;
(e) date from which option under this notification has been exercised;
(f) aggregate value of clearances of specified goods (excluding the value of clearances referred to in paragraph 3 of this notification) till the date of exercising the option;

(iii) the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (herein after referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed rupees one hundred lakhs;

9. The relevant provisions of Rule 11 (2) of the Cenvat Credit Rules reads "who has been taking CENVAT credit on inputs or input services before such option is exercised, **shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such option is exercised",** thus clearly stating that once the appellant opts for SSI exemption Notification, cenvat credit in respect of inputs lying in stock or in-process or contained in products lying in stock needs to be reversed. As seen from Rule 16 of Central Excise Rules, 2001, the cenvat credit taken on the **returned goods (finished goods)** is equivalent to taking credit on the inputs as the returned goods **are deemed to be inputs**. Therefore, the Commissioner (Appeals) was right in demanding the cenvat credit lying in stock as on 01.04.2005.

10. The original authority had observed that the appellant had cleared 45 stabilizers valued at Rs.11,80,134/- were cleared by them on payment of duty of Rs.1,88,821/- and Education Cess of Rs.3,776/- after crossing the SSI exemption limit in the year 2005-2006, which is also claimed by the appellant in their

grounds of appeal. These goods were lying in stock at the time of opting for exemption under the SSI Notification. Hence, this is of no relevance because as discussed above, the credit lying in stock on the returned goods had to be reversed in terms of the SSI Notification read with Rule 11 of the Cenvat Credit Rules, 2004. In view of the above, the impugned order confirming the demand of cenvat credit of Rs.3,47,656/- and Education Cess of Rs.6,953/- under Section 11A of the Central Excise Act, 1944 along with interest is upheld.

Appeal is dismissed.

(Order pronounced in Open Court on 13.12.2024.)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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