CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeals (s) Involved:

E/21109/2017

[Arising out of No. Order-in-Appeal No.76/2017/LTU dated 24/04/2017 passed by Commissioner of Central Excise, BANGALORE-I (Appeal).]

M/s. Suprajit Engineering Ltd
Plot No 100 Bammasandra Industrial Area
Anekal Taluk
BANGALORE - 560099
KARNATAKA

Appellant(s)

Versus

The Commissioner of Central Excise
Large Tax Payer Unit
100 FT RING ROAD JSS TOWERS,
BANASHANKARI-III STAGE,
BANGALORE – 560 085
KARNATAKA

Respondent(s)

Appearance:

Mr. Raghavendra B. Hanjer,
Advocate
S. RAGHU ADV
NO.543, 12TH CROSS, 8TH MAIN, J.P.NAGAR
2ND PHASE, BANGALORE 560 078

For the Appellant

Mrs. Kavitha Podwal, AR

For the Respondent

Date of Hearing: 11.01.2018
Date of Decision: 12.04.2018

CORAM:

HON'BLE SHRI S.S. GARG, JUDICIAL MEMBER

FINAL Order No. 20566 / 2018

Per : S.S. GARG

The present appeal is directed against the impugned order dated 24.4.2017 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant and upheld the Order-in-Original.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods viz., control cables, speedo cables, etc., falling under Chapter 87 and 84 of CETA. During the course of audit, it was observed that during 2012-13 and 2013-14, the Unit No.2 of the appellant had transferred their assets to Unit No.2A which held a different Central Excise Registration. The assets were transferred from Unit 2 to Unit-2A by raising invoices and debiting duty on the book value of these assets. Unit-2A had availed CENVAT credit on the duty paid on such assets. The audit felt that some of these goods did not satisfy the criteria of inputs or capital goods. Further, on certain capital goods they had availed 100% CENVAT credit instead of 50%. The amount of irregular CENVAT credit is as follows: Rs.2,472/- for the financial year 2012-2013 and RS.26,41,056/- for the financial year 2013-14 and Rs.2,20,258/- (50% of credit to be reversed), totally amounting to Rs.28,63,786/-. Therefore, a show-cause notice was issued to them for recovery of the irregular CENVAT credit of Rs.28,63,786/-. After following the due process, the Additional

Commissioner vide Order-in-Original dated 10.7.2015 confirmed the demand of ineligible CENVAT credit amounting to Rs.8,34,639/- along with interest and allowed the remaining amount of the credit. Thereafter, the appellant paid an amount of Rs.8,34,639/- towards CENVAT credit demand vide TR-6 Challan dated 1.12.2015. Thereafter, on 1.12.2015, appellant filed application seeking refund of Rs.8,34,639/- of the duty paid initially at the time of transfer of assets on the ground that the said amount has been paid twice; firstly, at the time of transfer of assets and subsequently, when CENVAT credit was denied through OIO No.77/2015 dated 10.7.2015. Thereafter, a show-cause notice dated 14.4.2015 was issued proposing to reject the refund on the allegation that no documentary evidences corroborating excess reversal/payment made by the appellant. Thereafter, vide order dated 1.8.2016, Deputy Commissioner rejected the refund claim on the ground that the appellant failed to produce any documentary evidence to show the excess payment of credit. Aggrieved by the said order, appellant filed the appeal before the Commissioner (A), who also rejected the appeal of the appellant and hence, the present appeal.

3. Heard both the parties and perused the records.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and the law. He further submitted that the very fact of admission of payment of duty at the time of transfer of assets by the appellant and subsequent reversal of the said amount for second time itself clearly proves that there was an excess payment of duty twice and consequently, the appellant is entitled for the refund of the said amount without production of any further documents. He further submitted that in the Order-in-Original dated 10.7.2015 passed by the Additional Commissioner clearly proves that there was excess payment of duty by Unit-2 at the time of transfer of assets to Unit-2A and that the same was availed as credit in Unit-2A, which was subsequently reversed on 1.12.2015 on the basis of Order-in-Original dated 10.7.2015. In support of his submission, he relied upon the decision of this Tribunal in the case of *Gasha Steels Pvt. Ltd. vs. CCE vide Final Order No.21334/2017 dated 28.7.2017*.

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the records, I find that it is a fact that when the assets were transferred from Unit-2 to Unit-2A, the appellant paid the duty and thereafter, Unit-2 availed the CENVAT credit of the same. The allegation of the department is that the appellant is not entitled to the CENVAT credit of Rs.8,34,639/- and vide Order-in-Original dated 10.7.2015, it was held by the Additional Commissioner that the appellant has wrongly availed the CENVAT credit of this amount which is liable to be reversed. Thereafter, the appellant has also paid the said amount vide TR-6 challan and filed the refund claim which was rejected only on the ground that the appellant has not been able to establish that he has paid the said amount twice. Further, I find that in the OIO dated 10.7.2015, it is clear that there was an excess payment of duty by Unit-2 at the time of transfer of assets to Unit-2A and thereafter, the appellant had to pay again the said amount of CENVAT credit by TR6 challan itself shows that duty was paid twice for which the appellant is entitled to get the refund and there is no need of production of any documents to substantiate the same when it is clearly admitted in the Order-in-Original that there was excess payment. In view of this, I am of the opinion that the impugned order denying the refund to the appellant is

not sustainable in law and the same is set aside by allowing the appeal of the appellant with consequential relief.

(Order was pronounced in open court on **12.04.2018.)**

S.S. GARG
JUDICIAL MEMBER

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