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

Appeal(s) Involved:

E/2605/2011-SM

[Arising out of Order-in-Appeal No. 347/2011 dated 06/05/2011 passed by the Commissioner of Central Excise, Bangalore]

Dolphin Die Cast Pvt. Ltd. No.68, 15th Cross, J.P.Nagar, 3rd Phase, Bangalore - 560 078	**Appellant(s)**

Versus

C.C.E.-Bangalore-III PB.No.5400, Queens Road, Central Revenues Building, Bangalore – 560 001 Karnataka	**Respondent(s)**

Appearance:

Shri S.R. Madhava Murthy, Consultant #107/4, 2nd Floor, 8th Cross, 6th Main, Malleswaram Bangalore – 560 003 Karnataka	For the Appellant
Shri Pakshirajan, Assistant Commissioner (AR)	For the Respondent

Date of Hearing: 26/11/2018
Date of Decision: 30/11/2018

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

Final Order No. 21823/2018

Per: S.S GARG

The present appeal is directed against the impugned order dated 06.05.2011 passed by the Commissioner (Appeals) whereby the

Commissioner (Appeals) has rejected the appeal of the appellant and upheld the Order-in-Original. Briefly the facts of the present case are that the appellants are engaged in the manufacture of excisable goods namely parts of automobiles falling under Chapter 87, machinery parts falling under Chapters 84 & 85 and parts of measuring instruments falling under Chapter 90 of Central Excise Tariff Act and are availing credit of duty paid on inputs and capital goods. Further they are sending their raw-materials such as Aluminum and Zinc Ingots to their job-work for manufacturing of casting and cleared the finished goods to their customer on payment of duty. They also engaged in supply of finished excisable goods to 100% EOU under CT-3 certification and export of excisable goods under Letter of Undertaking/under claim of rebate. Based on intelligence gathered by the Department that the appellant is taking wrong cenvat credit, the Departmental officer visited the premises and verified the record and found the following discrepancies:

(i) Stock of raw-material as on 24.08.2007: There was a shortage of 13,948 kgs of raw material stock as on 24.08.2007, on which cenvat credit was availed. The total cenvat credit on the above shortage of raw-material was worked at Rs. 2,98,758/- (Rupees Two Lakhs Ninety Eight Thousand Seven Hundred and Fifty Eight only). On being pointed out, the appellant voluntarily paid an amount of Rs. 2,98,758/- (Rupees Two Lakhs Ninety Eight Thousand Seven Hundred and Fifty Eight only) vide entry in their cenvat account on 25.08.2007. (Contravened the provisions of Rule 9(5) of Cenvat Credit Rules, 2004)

(ii) Stock of raw-material as on 31.03.2007: After computing the purchases and sales as per the stock statement the closing balance of stock as on 31.03.2007 worked out 1,20,491 kgs and as per the stock accounts it was shown as 84,009 kgs. Therefore there was a shortage of 36,482 kgs of raw-material stock as on 31.03.2007. The total cenvat credit so availed on the said shortage of stock worked out to Rs. 6,21,166/- (Rupees Six Lakhs Twenty One Thousand One Hundred and Sixty Six only). On being pointed out, the appellant voluntarily paid an amount of Rs. 6,21,166/- (Rupees Six Lakhs Twenty One Thousand One Hundred and Sixty Six only) vide entry in their cenvat account on 25.08.2007. (Contravened the provisions of Rule 9(5) of Cenvat Credit Rules, 2004 and Rule 10 of Central Excise Rules, 2002).

(iii) Non receipt of processed raw material from job work: On verification of Annexure IV register it was noticed certain raw-material sent for job work not received back even after 180 days. The duty involved therein was Rs. 4,00,116/- (Rupees Four Lakhs One Hundred and Sixteen only). On being pointed out, the appellant voluntarily paid an amount of Rs. 4,00,116/- (Rupees Four Lakhs One Hundred and Sixteen only) vide entry in their cenvat account on 25.08.2007 (Contravened the provisions of Rule 16 of Central Excise Rules, 2002)

(iv) Non receipt of crucibles from job work: Appellant availed cenvat credit on crucibles and sent for job work and not received back even after 180 days. The credit availed on said crucibles is Rs. 97,593/- (Rupees Ninety Seven Thousand Five Hundred and Ninety Three only). On being pointed out, the appellant reversed the same in their cenvat account on 25.08.207 (Contravened the provisions of Rule 16 of Central Excise Rules, 2002)

(v) Stock of raw-material at job workers end: There was a shortage of 4309 kgs of raw-material stock at the job worker’s end, on which cenvat credit was availed. The total cenvat credit on the above shortage of raw-material was worked at Rs. 92,312/- (Rupees Ninety Two Thousand Three Hundred and Twelve only). On being pointed out, the appellant agreed to such shortage of material and reversed through their cenvat account on 28.09.2007. (Contravened the provisions of Rule 9(5) of Cenvat Credit Rules, 2004).

After noticing these discrepancies, the Department issued the show-cause notice dated 26.03.2009 for appropriation of the amount of Rs. 15,09,995/- (Rupees Fifteen Lakhs Nine Thousand Nine Hundred and Ninety Five only) paid by the appellant under the provisions of Section 11 of the Central Excise Act 1944 and demanded interest under Section 11AB and for imposition of penalty under Section 11AC. After following the due process, the original authority confirmed the demand of Rs. 15,09,995/- (Rupees Fifteen Lakhs Nine Thousand Nine Hundred and Ninety Five only) on the ground that the appellant has not given any satisfactory explanation for not maintaining statutory record for the goods manufactured by them and they have suppressed the material facts from the Department and thereby willfully suppressed the material fact with intention to evade duty and imposed equal penalty under Section 11AC. Aggrieved by the said order, appellant filed appeal before the Commissioner who rejected the same. Hence the present appeal.

2. Heard both the parties and perused the records.

3. Learned counsel for the appellant submitted that shortage of stock in

the factory is worked out on the basis of physical weight of stock of work in process material as on 24.08.2007 compared with the weight of input as such received. As in process such as die casting, felting, drilling, tapping, machining which results in generation of retrievable as well as non retrievable scrap not considered. He further submitted that handling loss and cumulative loss in accounting not considered. In reply to this the learned AR submitted that there was a shortage of stock of 13,948 Kg and the duty involved on the shortage is 2,98,758/-. He further submitted that the original authority has given detailed reasons on verification that the assessee was not maintaining proper accounts for cenvatable inputs and thereby contravened the provisions of Rule 9(5) of the Cenvat Credit Rules 2004. He further submitted that the shortage was almost 1/3rd of the total stock. Further the original authority has found that assessee has not given any satisfactory explanation for having not maintained the statutory record for the goods manufactured by them and further the shortage has not been denied except for processing and handling loss. Therefore, I do not find any force in the contention of the appellant as far as shortage of cenvatable inputs and finished goods as on 24.08.2007 is concerned. Further the discrepancy of stock as per form 3CD filed with income tax return is concerned, after computing the total purchases and sales as per stock statement maintained by the assessee, the closing balance of stock as on 31.03.2007 worked out to 1,20,491 Kgs. On perusal of the closing stock as per the stock accounts available in their 3CD returns, the figure shown as 84009 Kg. Therefore, there was a shortage of raw-material to the extent of 36,482 which according to the appellant represents processing loss. As per the appellant this loss works out to 6.85 which is normal loss in a nature.

The learned counsel further submitted that as per the norms only loss up to 8% to 8.5% is accepted as normal. In reply to this issue, the learned AR submitted that in their reply the assessee has accepted their 3CD return as an official record duly certified by their auditors. He further submitted that the original authority has considered this issue and has come to the conclusion that there was a shortage in raw-materials and therefore the assessee is liable to reverse the proportionate cenvat credit which works out to Rs. 6,21,166/- (Rupees Six Lakhs Twenty One Thousand One Hundred and Sixty Six only). With regard to this issue I do not find any force in the submission of the learned counsel for the appellant and I upheld the demand on this account. Third issue was with regard to non receipt of material sent for job work beyond the time limit of 180 days. The learned counsel for the appellant submitted that input sent for processing to job work in some cases were returned back beyond the period of 180 days due to unavoidable reasons. He further submitted that they have produced the record of receipt from the job worker after the stipulated period of 180 days but both the authorities have refused to consider that and therefore if the case is remanded back for examination of this aspect they can still produce the record to verify that they have received the material after the stipulated period of 180 days from the job worker. In reply to this the learned AR submitted that at the time of verification they could not produce the sufficient record to justify the receipt of material from the job worker. He further submitted that this can be verified on remand to the original authority. The fourth point is ineligible cenvat credit availed on crucibles sent to job worker and the amount of duty involved is Rs. 97,593/- (Rupees Ninety Seven Thousand Five Hundred and Ninety Three only). In reply to this the learned counsel submitted that crucible is a melting body for metal and in the present case the crucible has been used for melting aluminium and zinc and during the process of taking out melting metal the crucible get broken and the resulting product is waste mud. He further submitted that crucibles used are in the nature of consumables and the cenvat credit on consumables is allowed. In this regard I find that the appellant could not justify from the record that the crucibles were used in the process of manufacture and it becomes waste because no records were maintained. Further the assessee has accepted the non receipt of crucibles sent for job worker for melting aluminium and zinc and therefore the duty liability on this count is also rightly confirmed. The next issue is with regard to shortage of raw-material observed after verification at job workers premises. In this regard the learned counsel for the appellant submitted that there is no record of having verified the stock of accounts at the premises of various job workers and if there was any such verification it was at the back of the appellant. In this regard I find that the original authority has found that cenvatable inputs sent for job work was not properly accounted for and verification of accounts conducted showed shortage of material sent for job work at job worker’s end. Further the original authority has recorded that Mr. Vijaya Kumar, Operations Director of M/s. Dolphin Die Cast Pvt. Ltd. in his statement dated 25.08.2007 given before the Superintendent of Central Excise has accepted that they should have paid the appropriate duty in respect of this violation. In this regard I do not find any merit in the contention of the appellant. Therefore both the authorities have rightly confirmed the duty of Rs. 92,312/- (Rupees Ninety Two Thousand Three Hundred and Twelve only) on this count. Further I find that the appellant has paid the total amount of Rs. 15,09,995/- (Rupees Fifteen Lakhs Nine Thousand Nine Hundred and Ninety Five only) which was appropriated in the Order-in-Original. As far as imposition of equal penalty under Section 11AC is concerned, the learned counsel for the appellant submitted that the appellant have not suppressed any facts from the Department and on their visit they have shown the entire records, from there these discrepancies were detected. He further submitted that there was no intention to evade and the Department has not brought any material on record to show that the appellant had the intention to evade. He further submitted that as soon as discrepancies were pointed out, the appellant paid the entire duty which was appropriated, therefore imposition of equal penalty is not justified. I find sufficient force in the argument of the learned counsel for the appellant that it is not a case of suppression of material facts with intent to evade payment of duty. Therefore, I am of the view that the imposition of equal penalty under Section 11AC is not warranted in the present case and therefore I drop the penalty. As far as verification of raw-materials received from the job worker within 180 days or beyond 180 days is concerned, the matter is remanded to the original authority to verify the same and thereafter pass a reasoned order. In view of my above discussion, the appeal is partly allowed.

(Order pronounced in Open Court on **30/11/2018**)

(S.S GARG)
JUDICIAL MEMBER

Indira...