CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 53225 of 2014

[Arising out of Order-in-Appeal No. 211/CE/APPL/DLH-IV/2013 dated 05.02.2014 passed by the Commissioner of Central Excise (Appeals), Faridabad]

M/s Namo Alloys Pvt Ltd ......**Appellant**
14/1, Mathura Road, Faridabad

VERSUS

Commissioner of Central Excise Delhi-IV ......**Respondent**
New CGO Complex, NH-IV.. NIT, Faridabad, Haryana 121001

APPEARANCE:

Present for the Appellant: Shri N.K. Sharma and Shri Bhavishay Sharma, Advocates
Present for the Respondent: Shri Harish Kapoor, Authorized Representative

CORAM: **HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)**
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60587/2024

DATE OF HEARING: 04.10.2024
DATE OF DECISION: 18.10.2024

PER S. S. GARG

The present appeal is directed against the impugned order dated 05.02.2014 passed by Commissioner of Central Excise (Appeals) Delhi, whereby the appeal of the appellant was rejected and Order-In-Original was upheld.

2. Briefly the facts of the case are that during the course of Audit of the appellant's unit the audit party had raised some objections with

regard to payment of duty on amortization cost of dies received from M/s Sunbeam Auto Ltd., Invoice No. 25351 dated 21.08.08 for Die for Cylinder Head and M/s M & M Machine Craft Pvt. Ltd. Invoice No. 11434 dated 02.11.09 for Cylinder Head on which credit of duty paid had been availed.

2.2 The audit made some calculations and pointed out short levy. for the period 2007-08 to 2009-10 on account of non inclusion of amortization cost of dies used for manufacture of cylinder head and Break Shoe. Thereafter, the appellant paid up Rs.85124/- vide PLA E.No. 006 dated 04.10.11. The said dies had been returned to the above said suppliers under Invoice No. 2800 dated 25.03.2010 to M/s Sunbeam Auto Ltd., and Invoice No. 2066 dated 15.10.10 respectively. The die from M/s Sunbeam Auto Ltd., had remained with the appellant from 21.08.08 to 25.03.2010 even though it was returned in between and again received. No die was received before 21.08.08 but the Deptt., had demanded duty on clearance made during 2007-08 and 2008-09 even though Audit had been done and facts were known to the Deptt. Demand could not be raised beyond one year. Similarly no dies was received for manufacture of Break Shoe but demand had been calculated on Break Shoe also. On these allegations, the Assistant Commissioner issued a show cause notice dated 04.05.2012. The appellant filed and after following the due process the Assistant Commissioner confirmed the demand along with interest and also imposed penalty. Aggrieved by the said order, appellant filed appeal before the Commissioner (Appeals) who rejected the appeal. Hence, the present appeal.

3. Heard both the parties and perused the material on record.

4. Ld. Counsel for the appellant submits that the impugned order is not sustainable in law and the same has been passed without properly appreciating the facts and the law. He further submits that the entire case of the Revenue is based on the show cause notice issued on the basis of the above stated two invoices bearing nos. 20650 dated 31.03.2009 and 11434 dated 02.11.2009 and perusal of the said invoices which have been placed by him on record showed that the appellant has received die for manufacturing cylinder heads only whereas the demand has been calculated in the show cause notice under para 3 by including clearance of both items i.e. cylinder heads and brake shoe. Ld. Counsel further submits that the appellant fairly concedes the duty liability of Rs. 9506 on account of cylinder head only for the period 2009-2010 only and the Balance demand of Rs.1,35,042/- (after excluding the demand on account of brake shoe and limitation period), as stated in para 3 of the show cause notice which pertains to the period 2007-2008 and 2008- 2009 which is totally time barred, because the revenue has already conducted the detailed audit of the appellant under EA-2000 on dated 20 August, 23 August,25 August, 27 August and 3rd of September of 2010 by the audit group 3 Delhi-IV central excise and the copy of audit report has also been enclosed with the appeal paperbook.

4.2 He further submits that invoking the extended period on the ground of suppression of fact is not justified because the appellant has not suppressed any material facts and the audit conducted earlier by the Department did not raise any such objection.

5. On the other hand, Ld. AR reiterated the findings of the impugned order.

6. We have considered the submissions of both the parties and perused the material on record, we find that the entire demand was raised in the show cause notice on the basis of two invoices, the copy of which has also been produced on record; both invoices bearing nos. 20650 dated 31.03.2009 of M/s Sunbeam Auto Ltd. and Invoice No. 11434 dated 02.11.2009 of M/s M & M Machines Craft Pvt. Ltd; and the perusal of both the invoices shows that the appellant got the die of cylinder heads only and not the die of brake shoe as alleged by the Department.

7. We further find that the appellant was subjected to regular audit in the year 2010 also and no such objection was ever raised by the Revenue. We also find that the Revenue has not been able to bring on record any fact which shows that the appellant has suppressed the material facts to justify the invocation of extended period to confirm the demand. We also find that the appellant has conceded the demand for the normal period on account of cylinder heads only which he is liable to pay.

8. In view of the facts stated above, we are of the considered opinion that the appellant is liable to pay the duty on account of cylinder heads only and that to for the normal period for the year

2009-10 only and the demand of duty on brake shoe by invoking the extended period of limitation is not sustainable and therefore, we set aside the same and confirm the duty liability for the normal period along with interest and for quantification of the same, we remand the case back to the Original Authority to determine the same. Accordingly, the appeal is allowed by way of remand. The Original Authority is directed to do the needful within a period of two months after the receipt of this order. Further, the Adjudicating Authority, if found that the appellant has made a deposit of more than his liability then the same may be refunded to them accordingly.

(Order pronounced in the open court on 18.10.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

Kailash