CUSTOMS, EXCISE & SERVICE TAXAPPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

SINGLE MEMBER BENCH

COURT NO.1

Appeal No.E/3749 & 3719/2012-EX (SM)

(Arising out of OIA No.80-81/CE/APPL/DLH-IV/2010 dt.30.8.2012 passed by the CCE(Appeals), Faridabad)

Date of hearing/decision: 18.01.2019

M/s. Hariom Forgings Pvt Ltd. **Appellant**
H.M.Dagar, Director
Vs.
CCE, Delhi-IV **Respondent**

Appearance

Shri D.K.Tiyagi, Advocate- for the appellants
Shri H.Singh, AR for the respondent

CORAM: **Hon'bleMr.Ashok Jindal, Member (Judicial)**

FINAL ORDER NO.60048-60049/2019

Per **ASHOK JINDAL:**

The appellant is in appeal against the impugned order wherein the credit on various issues has been denied to the appellant.

2. The facts of the case are that the appellant is engaged in the manufacture of steel forgings for which they procured raw materials. The quantity of purchases of raw material recorded in RG-23A Part-1 register as well as balance sheet, some discrepancy was found on the basis of examination of records. Therefore, the appellant is not entitled to avail credit of Rs.1,55,500/- as description of the goods in the invoices of dealer did not match with the description given by the manufacturers of the goods. Further, the credit sought to be denied on the ground that there is difference in figures of certain inputs from their balance sheet and the RG-23A Part-1 register as they have

shown higher figures in the quantity of purchases and utilization thereof by the appellant. Further, the credit on certain inputs sought to be denied on the ground that they were shown as purchases by the appellant but did not reflect in the records how they were consumed and how they were disposed of. On these grounds, a show cause notice was issued to the appellant to deny credit and recovery thereof along with interest and to impose penalty. The matter was adjudicating, the demand on account of denial of credit along with interest was confirmed and penalty was also imposed. Against the said order, the appellant is in appeal before me.

3. Heard the parties and considered the submissions.

4. As there are various issues raised on which credit sought to be denied, all issues are to be dealt with separately:-

(**a) denial of credit having mismatch of the description in the invoices issued by the dealers and the description given by the manufacturer of the goods**.

5. On going through the records placed before me, it is not disputed that the appellant has not received the goods and not paid duty on the goods and used in the manufacture of their final products. If it is the case of the Revenue that the appellant has not received the goods then the Revenue failed to prove from where the appellant received the goods. Moreover, the Revenue has investigated the manufacturer of the goods who have explained the description in the invoices. Merely on the basis of statement, the case has been made out which is not admissible evidence to deny credit to the appellant. The receipt of input is not disputed. In that circumstance, I hold that the appellant is entitled to avail credit.

(**b) denial of credit on the basis of figures of RG-23A Part-1 and figures shown in the balance sheet of purchases.**

6. On perusal of the records, I find that the appellant has explained the discrepancy of figures in reply to the show cause notice but the same was not considered by the adjudicating authority and the Commissioner (Appeals) has given vague finding on the subject. The appellant has not explained certain inputs received by them were cleared as such and on payment of duty. This fact has been recorded by the Commissioner (Appeals) but inputs have been cleared as such are not the inputs received by the appellant then from where the inputs received by the appellant which have been cleared on payment of duty. This has not been explained by the Revenue. Therefore, as all the difference in figures have been explained by the appellant in reply to the show cause notice and no comments have been made by the Revenue, in the circumstance, the explanation given by the appellant is acceptable. Accordingly, the same is accepted. Therefore, on this ground the credit cannot be denied to the appellant.

(c) denial of credit on fabrication of dies which has been ultimately used for manufacture of final products.

8. I find that the appellant has explained the usage of inputs in fabrication of dies which has been ultimately used for fabrication of final products. The case of the Revenue is that the appellant has not shown any figure in RG-23A Part-1 register and monthly returns for fabrication of dies. I find that it is fact on record that the appellant has manufactured dies from inputs received by them. If these dies are not manufactured by the appellant from the inputs in question then the Revenue has failed to explain from where the appellant got

inputs to manufacture to dies. Therefore, in that circumstance, the benefit of doubt goes in favour of the appellant and moreover non recording of manufacturing of dies in RG-23A Part-1 register and ER-1 returns is only procedural lapse for which the appellant can be penalized but the credit cannot be denied to the appellant. In that circumstance, I hold that the appellant is entitled to avail credit.

9. In view above observations, the following order is passed:

I hold that the appellant is entitled to avail credit. Therefore, the demand of duty is set aside and no interest is payable by the appellant. For procedural lapse, a penalty of Rs.5,000/- is imposed on the appellant M/s.Hariom Forgings Pvt.Ltd. and no penalty is imposable on Shri H.M.Dagar, Director.

10. With these observations, the appeals are disposed of.

(dictated and pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

mk