CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Appeal No. E/60782/2018

[Arising out of OIA-JNK-EXCUS-APP-226/17-18 dated 28.02.2018 passed by the Commissioner (Appeals) of Central Excise, Jammu]

M/s Jackson Limited DTA : Appellant (s)
5a to 10a & 6b Lid Center Govindsar,
Kathua, Jammu and Kashmir 184101

Vs

Commissioner of Central Excise, Jammu : Respondent (s)
CCE & ST- Jammu and Kashmir
OB-32, Rail Head Complex,
Jammu & Kashmir-180012

APPEARANCE:
Shri Vikrant Kackaria, Advocate for the Appellant
Shri M. S. Dhindsa, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JINDAL)

FINAL ORDER No. 60780 / 2019

Date of Hearing/Decision: 25.09.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein the penalty has been imposed on the appellant they are also challenging the demand confirmed against the appellant under Rule 6 of Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant is located in the state of Jammu & Kashmir and manufacturing the Generator Sets. The generator sets are dutiable, but they are exempt under Notification No. 12/2012-CE dated 17.03.2012 for clearing goods to certain class of buyers. The case of the Revenue is that as the appellant is manufacturing dutiable as well as exempted goods and
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not maintaining separate account of inputs/input services for manufacturing of dutiable as well as exempted goods, therefore, they are liable to pay an amount equal to 6% of the value of exempted goods cleared by them under Rule 6(3) of Cenvat Credit Rules, 2004. In these terms, the demand was raised against the appellant by way of issuance of show cause notice dated 08.06.2016 for the period June 2013 to June 2014.

3. The Ld. Counsel for the appellant submits that the factum of clearing goods duty free were brought in the knowledge of the department on 29.04.2014 through a letter and thereafter audit was conducted in November 2015 and SCN has been issued in June 2016, therefore, the SCN is barred by limitation. He also submitted that it is a revenue neutral situation as they are located in the state of Jammu and Kashmir if they are required to reverse the cenvat credit on exempted goods cleared by them then they were required to pay higher duty from the PLA and the same shall be entitled for refund. Therefore, there was no malafide intention of the appellant, in that circumstances, the extended period of limitation is not invokable.

4. On the other hand, the Ld. AR supported the impugned order and submits that it is an admitted fact that the appellant is clearing dutiable as well as exempted goods and is not maintaining separate account for the same. The same was came in the knowledge of the department in November 2015, when the audit was conducted and the SCN has been issued in June 2016, therefore, the malafide of the appellant has been proved. Hence, the extended period of limitation is applicable to the facts of this case.

5. Heard the parties.

6. On hearing the parties, I find that the core issue in the matte is whether the provision of Rule 6 of Cenvat Credit Rules, 2004 is applicable to the facts of this case or not?

I find that on the provision of Rule 6(3) is applicable when assessee is manufacturing dutiable as well as exempted goods and not maintaining separate account for inputs/input services with regard to exempted as well as dutiable goods. Admittedly, the goods manufactured by the appellant i.e. Generator Sets are dutiable, it is only at the time of clearance (if the said goods are cleared to a certain group of buyers who are entitled to claim exemption under Notification No. 12/2012-CE dated 17.03.2012 to purchase the goods duty free) the appellant did not pay duty. In that circumstances, I hold that the provision of Rule 6 of Central Credit Rules, 2004 are not applicable to the facts of the case as the appellant is manufacturing only dutiable goods, therefore, the question of payment of the amount @8% of the goods cleared duty free does not arise. In that circumstances, I do not find any merit in the SCN as well as in the impugned order. Accordingly, the impugned order is set-aside and allow the appeal with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.