CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 3160 Of 2010

[Arising out of OIA No. 767/CE/Appeal/Chd-II/2010 DATED 14.05.2010 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s Continental Transformers : **Appellant (s)**
VILLAGE-KANTHPUR, SALMERI, P.O. JAKH, JAMMU.

Vs

CCE.- Jammu : **Respondent (s)**
OB-32, RAIL Head Complex, Jammu - 180012

APPEARANCE:
Shri A.S. Gill, Advocate for the Appellant
Ms. Geetika, Authorised Representative for the Respondent

CORAM : HON'BLE Dr. D. M. Misra, MEMBER (JUDICIAL)
HON'BLE Mr. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

ORDER No. A/60330 / 2020

Date of Hearing:04/03.2020

Date of Decision:04/03.2020

Per : Dr. D. M. Misra

This is an appeal filed against the OIA No. 767/CE/Appeal/Chd-II/2010 dated 14.05.2010 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II.

2. Briefly stated the facts of the case are that the appellant are engaged in the manufacture and repair of transformers. They have filed refund claims of Excise duty including Education Cess and Higher Education Cess (paid through PLA) for Rs. 32,70,808/- on 15.12.2008 under Notification No. 56/2002-CE dated 14.11.2002. Out of the said claim, the adjudicating authority rejected a part of the refund claim and appropriated an amount of Rs. 1,22,459/- from the sanctioned
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amount. Aggrieved by the said order, they filed appeal before the Ld. Commissioner (Appeals), who in-turn, rejected their appeal. Hence, the present appeal.

3. The Ld. Advocate for the appellant even though raised various issues in their grounds of appeal assailing the impugned order-in-appeal, however, at present choose to contest the issue of appropriation of the amount of Rs. 1,22,459/- against the sanctioned refund claim. He submits that the adjudicating authority has wrongly appropriated the amount of Rs. 1,22,459/- considering it as an excess utilization of cenvat credit without affording an opportunity to them to explain the said issue. Hence, to this extent, the order is bad in law. It is grievance that the Ld. Commissioner (Appeals) also has not considered the said issue and upheld the order of the adjudicating authority.

4. Per contra, the Ld. AR for the Revenue reiterated the findings of the Ld. Commissioner (Appeals). He has no objection in remanding the matter to the adjudicating authority.

5. We have carefully considered the submissions advanced by both sides, we find that the appellant has filed a refund claim under Area Based Exemption Notification No. 56/2002-CE dated 14.11.2002. The adjudicating authority rejected a portion of the refund claim on various ground which the appellant even raised in their grounds of appeal but, choose not to contest the same further as the principle of law in this regard is settled against them. The appellant has contested only the appropriation of amount of Rs. 1,22,459/- against the sanctioned refund claim. It is their grievance that before appropriation of the said amount, the adjudicating authority has not

provided an opportunity to them to explain about liability of the said amount and considered as an excess of utilization of cenvat credit on HV/LV Coils during the month of July 2007. We find merit in the argument of the Ld. Advocate for the appellant. From their records, we find that before appropriation of the said amount, the appellant was not given opportunity to explain the liability of the amount so appropriated; therefore, keeping in mind the principle of natural justice, we direct the adjudicating authority to follow the principle of natural justice by disclosing the appellant in detail the facts leading to appropriation of the amount from the sanctioned refund claim.

6. In result, the impugned order to the extent of appropriation of the amount of Rs. 1,22,459/- from the refund amount is set-aside and the matter is remanded to the adjudicating authority for re-consideration of the said issue after affording a reasonable opportunity to the appellant to explain about the said appropriation. Appeal is allowed by way of remand.

(Operative part of the order was pronounced in the open Court)

(D. M. MISRA)
MEMBER (JUDICIAL)

(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

G.Y.