IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/161/2011

(Arising out of Order-in-Appeal No.94/2010 (M-IV) dated 8.12.2010 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Forbes and Company Ltd. Appellant

Vs.

CCE, Chennai – IV Respondent

Appearance

Shri P.C.Anand, Chartered Accountant for the Appellant
Shri R. Subramanian, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **03.04.2018**

Final Order No. **41062 / 2018**

Per Bench

Brief facts are that the appellants are manufacturers of manual typewriters and vacuum cleaners. They procured raw materials like plastic, paper, fabric etc. and availed CENVAT credit on the same. They cleared the above items to the job worker under Rule 4(5)(a) of CENVAT Credit Rules, 2004 for the manufacture of VCS components like front wheel body, inner and outer panel etc. On receiving such components from the job worker, the appellant then cleared the same to their own unit at Bhimtal on stock transfer basis on payment of duty on the assessable value arrived at by taking into account the cost of the inputs supplied to the job worker and the job charges paid to such job worker. The department was of the view that the appellant ought to have arrived at the assessable value by adding 10% profit margin on cost of production as per Section 4(1)(b) of Central Excise Act, 1944 r/w Rule 8 of Valuation Rules, 2000. Show cause notice was issued for the period from December 2003 to December 2007. After due process of law, the original authority confirmed the demand, interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, ld. consultant Shri P.C. Anand submitted that even if the appellant had paid duty including 10% of the cost of production, the same would be eligible as credit to their sister unit at Bhimtal since the components were stock transferred to their sister unit only. The whole exercise being revenue neutral, there can be no intention on the part of the appellant to evade payment of duty. He relied upon the decision in the case of Hindustan Zinc Ltd. Vs. Commissioner of Central Excise – 2008 (232) ELT 687 (Tri. Del.).

3. The ld. AR Shri R. Subramanian reiterated the findings in the impugned order.

4. Heard both sides.

5. The allegation is that the appellant did not discharge duty liability on the 110% of the cost of production. It is seen that the job worked components were cleared to their own sister unit on stock transfer basis. Even if the appellant had paid the said duty, the same would be eligible as credit to their sister unit. Similar issue was considered by the Tribunal in the case of Hindustan Zinc Ltd. (supra), wherein the Tribunal observed as under:-

> *"4. We, after hearing both sides, find that the appeal can be disposed of on the point of revenue neutrality. Admittedly, the duty paid by the appellant was being availed as Modvat credit, which the other unit was in a position to utilize. The Tribunal in the case of PTC Industries Ltd. v. C.C.E., Jaipur-I - 2003 (159) E.L.T. 1046 (Tri-Del.) has held that whatever duty is paid by one unit on sale of goods to the assessee's another unit is being available as credit to the other unit, there was no warrant for demanding duty. In the present case, we find that the zinc concentrate was only being transferred to the appellant's own unit and was not being sold at all. Whatever duty was being paid by the appellant was available as credit to them and nothing would go into the Revenue's pocket. The entire excise is revenue neutral as neither the assessee stands to lose anything by paying higher duty nor the Revenue stands to gain anything by the appellant's adoption of lower assessable value. As such, we are of the view that demand is unwarranted and unsustainable on this count alone. We, accordingly, set aside the impugned order and allow the appeal with consequential relief to the appellant."*

6. Taking note of the fact that the entire exercise is revenue neutral situation, neither the assessee stands to lose anything by paying higher duty nor the Revenue stand to gain anything by appellant's adoption of lower assessable value, we are of

the considered opinion that the demand is unwarranted and is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was
pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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