CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHENNAI

Regional Bench – Court No. III

Excise Appeal No. 41951 of 2018

(Arising out of Order-in-Appeal No. 161/2018 (CTA-II) dated 31.03.2018 passed by the Commissioner of Central Tax (Appeals-II), C.G.S.T. & Central Excise, Newry Towers, 3rd Floor, Plot No. 2054, I Block, II Avenue, Anna Nagar,Chennai – 600 040)

M/s. Stanadyne India Ltd., **: Appellant**
No. 96, Thiruvallur Poonamalle Road,
Aranvavoyal Village, Thiruvallur – 602 025

VERSUS

The Commissioner of G.S.T. & Central Excise, **: Respondent**
Chennai Outer Commissionerate,
Newry Towers, 3rd Floor, Plot No. 2054,
I Block, Anna Nagar, Chennai – 600 040

APPEARANCE:

Shri. M. Karthikeyan, Advocate for the Appellant

Shri. L. Nandakumar, Authorized Representative for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 40765 / 2019

DATE OF HEARING: 06.05.2019

DATE OF DECISION: 06.05.2019

Brief facts are that the appellants are engaged in the manufacture of IC Engine Pump Filter, Injectors, etc., and are registered with the Central Excise Department. They de-bonded their 100% EOU as per final exit order dated 05.09.2013 after paying appropriate duty and converted the unit into DTA from 100% EOU status. During scrutiny of ER-1 returns for the month of September 2013, it was noticed that the appellants had taken CENVAT Credit on the duty paid on capital goods received under Notification No. 22/2003-CE dated 31.03.2003 and Notification No. 52/2003-Cus. dated 31.03.2003 at the time of de-bonding.

2. The Department was of the view that the proviso to Rule 3(1) of the CENVAT Credit Rules ('CCR' for short), 2004 was only for allowing credit in respect of the amount equal to Central Excise Duty paid on the capital goods at the time of de-bonding of the unit in terms of paragraph 8 of Notification No. 22/2003-CE. That CCR, 2004 does not allow credit in respect of the duty paid in terms of Notification No. 52/2003-Cus. dated 31.03.2003 on the de-bonded capital goods which were imported. Further, that TR-6 challans are not prescribed documents for taking credit on goods in terms of Rule 9 of the CCR, 2004. The appellants had taken 50% credit on the imported capital goods at the time of de-bonding and the same was ordered for recovery by the Commissioner of Central Excise, Chennai II Commissionerate vide earlier Order-in-Original No. 45/2014 dated 30.09.2014. Subsequently, it was noticed that in May 2014, they had taken the balance credit of 50% to the tune of Rs. 15,65,931/- on imported capital goods. It appeared that they had contravened the provisions of Rule 3(1) of the CCR, 2004 for which a Show Cause Notice was issued proposing to demand the said amount along with interest and also for imposing penalties. After due process of law, the Original Authority confirmed the demand, interest and imposed penalty of Rs. 1,60,000/- under Rule 15(1) of CCR, 2004. In appeal, the Commissioner (Appeals) vide impugned order dated 31.03.2018 upheld the same. Hence, this appeal.

3.1 On behalf of the appellant, Ld. Advocate Shri. M. Karthikeyan submitted that an earlier Show Cause Notice No. 44/2013 dated 07.05.2014 was issued by the Department alleging wrongful availment of credit of 50% on imported capital goods as well as the credit availed on inputs and raw materials. The Department has not proposed to recover the credit availed on domestically procured capital goods. The said Show Cause Notice culminated in the confirmation of demand vide Order-in-Original No. 45/2014 dated 30.09.2014 against which the appellant had preferred an appeal before the Tribunal. The appellant's case was considered along with another appeal and vide common Final Order Nos. 40274-40275/2017 dated 14.02.2017, the Tribunal held the issue of availing credit of the CVD paid on imported capital goods in favour of the appellant. However, the issue with regard to the eligibility of credit on inputs and raw materials was held against the appellant. The appellants have filed an appeal before the Hon'ble High Court against the disallowance of credit on inputs and raw materials which is pending.

3.2 He pointed out that the Department has disallowed the credit on the CVD portion of the imported capital goods stating that the proviso introduced in 2008 in Rule 3(1) of the CCR, 2004 only mentions Notification No. 22/2003 and not Notification No. 52/2003-Cus., which deals with the import of capital goods and raw materials without payment of duty by a 100% EOU.

3.3.1 The Ld. Counsel adverted to Board Circular No. 185/19/96/CX dated 19.03.1996 and submitted that the said issue as to whether the assessee is eligible for credit on the amount equal to the Excise Duty paid on indigenous and imported capital goods while de-bonding was considered by the Department in the said Circular. It was then clarified that the CVD component of the duty discharged on imported capital goods is to be allowed as MODVAT Credit. This Board Circular has so far not been withdrawn or rescinded. Later, proviso to Rule 3(1) ibid was introduced as a clarification wherein it was stated that the amount equal to Central Excise Duty paid on capital goods at the time of de-bonding as per Notification No. 22/2003-CE is eligible for credit. Thus, the assessee would be eligible for credit on the amount equal to the Central Excise Duty paid on capital goods which are imported, as per the Board Circular and would also be eligible for the amount equal to the Central Excise Duty paid on indigenous capital goods as per the proviso to Rule 3 ibid.

3.3.2 To support his above arguments, he relied upon the decision in the case of ***Commissioner of C.Ex., Pune Vs. M/s. Rajdhani Fab Pvt. Ltd. reported in 2008 (221) E.L.T. 435 (Tri. – Mumbai)***. In paragraph 4 of the said judgement, the Tribunal had discussed the eligibility of credit on the amount equal to Central Excise Duty paid on indigenous capital goods. During the relevant period, the Board Circular allowed the credit of the CVD paid on imported capital goods as well as the Central Excise Duty paid on indigenous capital goods. The Department had rejected the claim of Credit of the appellant on the Central Excise Duty paid on indigenous capital goods, for which the appellant had preferred an appeal before the Commissioner (Appeals), who decided the issue in favour of the assessee. In the appeal filed by the Department before the Tribunal, it was held that the view of the Commissioner (Appeals) in allowing the credit of the duty paid on indigenous capital goods is correct. The said view of the Tribunal was upheld by the Hon'ble High Court of Bombay in ***Commissioner Vs. M/s. Rajdhani Fab. Pvt. Ltd. reported in 2009 (237) E.L.T. A47 (Bom.)***

3.4 It is also argued by him that though the proviso to Rule 3(1) ibid does not specifically mention Notification No. 52/2003-Cus, paragraph 8 of Notification No. 22/2003 makes it very much clear that for capital goods, the amount equal to the Excise Duty has to be paid at the time of de-bonding and with respect to all other goods (inputs/raw materials), the Excise Duty has to be discharged by the assessee at the time of de-bonding. For this reason also, even though the proviso does not mention Notification No. 52/2003-Cus., Rule 3(1) permits availing CENVAT Credit of the Central Excise Duty as well as CVD paid.

3.5 He therefore prayed that the appeal may be allowed.

4. Ld. AR Shri. L. Nandakumar appearing on behalf of the respondent supported the findings in the impugned order. He emphasized the fact that proviso to Rule 3(1) mentions only Notification No. 22/2003 which deals with the Excise Duty paid on indigenous capital goods. The appellant has availed credit of the CVD paid on imported capital goods. Since the proviso to Rule 3(1) does not allow credit on CVD paid on imported capital goods, the Department has rightly rejected the same.

5. Heard both sides.

6. At the outset, it has to be stated that the very same issue of eligibility of 50% of the credit of capital goods availed by the appellant at the time of de-bonding was disputed by the Department for which a Show Cause Notice had been issued. The said matter reached the Tribunal and vide Final Order Nos. 40274-40275/2017 dated 14.02.2017, the Tribunal held the issue in favour of the appellant. The relevant paragraph is noted as under :

> *" 19. As regard the admissibility of cenvat credit on imported capital goods (Sl.No.3 of the Table at page 6 of OIO), the Commissioner has held that the assessee is eligible to take cenvat credit of Rs.5,67,390/- of CVD/AED paid on imported machinery and tools. He also held that TR-6 challan is a valid document to take cenvat credit of CVD/AED in respect of the capital goods (Sl.No.3 of the Table at page 6 of OIO). The cenvat credit has been denied on the ground that the assessee did not produce TR-6 challan, bills of entries or invoices containing the details of duty payment. The appellants have enclosed the copies of the official correspondences stating that (page 53 and 51 of the paper book) all the TR-6 challans in question were submitted to the department even before availing the cenvat credit. Since production of challans and eligibility thereof for cenvat credit on capital goods is a question of fact, which needs to be verified, the same is liable to be remanded to the adjudicating authority for verification."*

7. Thus, the 50% credit availed by the appellant on the very same capital goods has been allowed by the Tribunal. The Department has not been able to apprise the Bench that any appeal has been filed by the Department against such order. Thus, the decision of the Division Bench of the Tribunal with regard to the issue of eligibility of credit on the imported capital goods is decided in favour of the assessee.

8.1 However, taking into consideration the discussions made in the impugned order, it is to be stated that the Board has issued Circular No. 185/19/96/CX dated 19.03.1996 wherein it was clarified that the assessee would be eligible for availing credit on the CVD paid at the time of de-bonding on the capital goods which are imported. The Tribunal in the case of *M/s. Rajdhani Fab Pvt. Ltd. (supra)* had occasion to analyze the issue of the credit availed on Excise Duty paid on indigenous capital goods before the amendment was brought forth to Rule 3(1) by adding the proviso. In the said decision, the Tribunal had held that the Board Circular clarifies with regard to the eligibility of credit on the CVD paid on imported capital goods. The issue with regard to the Central Excise Duty paid on indigenous capital goods was then decided in favour of the appellant. The said decision has been upheld by the Hon'ble High Court of Bombay. When the Board Circular clarifies that the credit of CVD paid on imported capital goods is eligible, the non-mention of the said Notification No. 52/2003-Cus. in Rule 3(1) of the CCR, 2004 does not make much relevance, especially since the doubt was only as to eligibility of credit on payment of amount equal to the Excise Duty leviable in respect of capital goods.

8.2 As already stated, the issue as to whether the assessee is eligible for the credit availed on the CVD paid on imported capital goods having been decided by the Division Bench of the Tribunal in the appellant's own case *(supra)* for the 50% availed by them, by judicial discipline, I follow the same and hold that the credit availed for the balance 50% in the subsequent period is in order. The demand cannot sustain. The impugned order is therefore set aside.

9. The appeal is allowed with consequential reliefs, if any, as per law.

(Dictated and pronounced in open court)

(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

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