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

Appeal No.E/192/2009

[Arising out of Order-in-Original No.13/COMMR/CE/2008 dt. 31.12.2008 passed by the Commissioner of Central Excise, Tirunelveli]

Sterlite Industries (I) Ltd. Appellant

Versus

Commissioner of Central Excise,
Tirunelveli Respondent

Appearance:

Shri G. Krishnamurthy, Advocate
For the Appellant

Shri B. Balamurugan, AC (AR)
For the Respondent

CORAM :

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

Date of hearing / decision : 10.11.2017

FINAL ORDER No. 43003/2017

Per Bench

The facts of the case are that appellants herein are engaged in manufacture of copper anode, sulphuric acid, phosphoric acid. Appellant had cleared capital goods to their sister unit in Silvasa as

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job worker to undertake certain processes. The appellant availed cenvat credit on capital goods directly sent to the job worker on their behalf amounting to Rs.93,04,021/- . Department took the view that in terms of Rule 3 (1) of Cenvat Credit Rules, 2004, the manufacturer of final product shall be allowed to take cenvat credit of duties of excise paid on any input or capital goods received in the factory of manufacture, including duties or tax or cess paid on any inputs or input services used in the manufacture of intermediate product by a job worker functioning under Notification No.214/86-CE. Accordingly, proceedings were initiated against the appellant which culminated in the impugned order dt. 31.12.2008 ordering recovery of the said amount of Rs.93,04,021/- along with interest thereon and equal amount of penalty. Hence this appeal.

2. Today when the matter came up for hearing, on behalf of appellant, ld. Advocate Shri G. Krishnamurthy submits that the job worker in question was their own sister unit in Silvasa (Union Territory). They had taken permission from jurisdictional Central Excise authorities for manufacture of copper anode from Tuticorin to their Silvasa unit for job work. Ld. Advocate also takes us to letter dt.23.5.2003 of the Jt. Commissioner of Central Excise, Tirunelveli on page 162 of the appeal book to highlight that they had been permitted

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to take cenvat credit on capital goods which they intended to despatch to job worker in terms of Rule 4 (5) (a) of CCR. He submits that there is no dispute that the capital goods in question were received at the job worker's end and they were put to use for the purpose intended. There is also no dispute that the capital goods after completion of job work had been returned to them. In the circumstances, there is only a procedural deviation for for which reason they should not be denied capital goods credit. He relies upon the ratio of the following decisions :-

(i) OPG Metals Pvt.Ltd. Vs CCE Trichy
2016 (344) ELT 990 (Tri.-Chennai)

(ii) Bharat Heavy Electricals Ltd. Vs CCE Bhopal
2011 (274) ELT 359 (Tri.-Del.)

(iii) Steel Authority of India Ltd. Vs CCE Bhubaneshwar
2007(219) ELT 960 (Tri.-Del.)

He also submits that all these activities were fully in the knowledge of the department and that there was no suppression or misstatement of facts. Ld. Advocate also submits that they had taken the credit in respect of capital goods after their receipt at the job worker's end and the job work had been completed and the goods not received, however they had only taken the credit and reversed the credit immediately. They only took actual credit of the capital goods when they were returned by the job worker and received by them. The department has taken the date of re-credit as the 'relevant date' for the purpose of issue of SCN which is not correct. He submits that the date of first credit should have been taken, in which case notice would be beyond the period of limitation. In any case, he submits that as the ingredients of Section 11AC of the Act are not present, there can be no penalty imposable on them.

3. On the other hand, Ld. A.R Shri B. Balamurugan supports the impugned order. He takes us to the provisions of Rule 3 (1) of the CCR to highlight that the manufacturer is entitled to take cenvat credit only in respect of the inputs and input services directly received/availed by the job worker. However, there is no such provision for direct receipt of the capital goods by the job worker and eligibility for availing credit by the main manufacturer. Ld. A.R. further submits that as the appellant had reversed the credit immediately after taking it, the cause of action would not arise at that point and that the same would arise only on the date when the capital goods have been received back and the credit was taken thereof by appellant.

4. Heard both sides and have gone through the facts. The provisions of Cenvat Credit Rules which are in dispute are very clear.

No doubt, there is beneficial provision available which allows for input or input services to be received directly by the job worker and credit thereof to be taken by the manufacturer of the final product / provider of output service. However, the law does not allow for taking such credit when the capital goods are similarly received directly at the job worker's end. Ld. Advocate has elucidated a permission given by the department under Rule 4 (5) (a) of the Rules to contend that such permission would also entitle them to take credit on the capital goods received by the job worker / sister unit. We are afraid that this contention is misconceived.

5. The permission accorded under Rule 4 (5) (a) or for that matter, the permission to operate under Notification No.214/86-CE is only to facilitate movement of capital goods to the job worker for manufacture of intermediate / final products. These permissions are attendant with certain conditions and procedures that are required to be followed, but in no way do they sanctify the availment of cenvat credit in respect of capital goods received directly at the job worker's end. In any case, no permission can go beyond the boundaries of the statute. We also find that the case laws cited by the ld. advocate are not relevant to the issue at hand, hence they would not be of any help to the appellant. For these reasons, we do

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not find any reason to interfere with the order of recovery of cenvat credit amount Rs.93,04,021/- along with interest thereon.

6. On the issue of penalty, however, we find that there is merit in the plea of the ld. advocate that the entire manner of job work got done by the appellant was within the knowledge of the department. There is also no allegation that the goods, though received directly at the job worker's end, were not used for the purpose they were intended, or for that matter, that they were not returned back to the appellant etc. This being the case, we find that appellants become liable to the duty liability only because the procedure that they followed is not within the scope of Rule 3 (1) of Cenvat Credit Rules. In the event, we take a view that penalty imposed in this case would be an overkill, for which reason, the same cannot be sustained. Penalty is therefore set aside.

7. Appeal is partly allowed on above terms, with consequential benefits, if any, as per law.

(dictated and pronounced in court)

(Madhu Mohan Damodhar)	Sulekha Beevi (Sulekha Beevi C.S)
Member (Technical)	Member (Judicial)

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सहायक पंजीकार / Asst. Registrar
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