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

E/462/2010

(Arising out of Order-in-Appeal No. 11/2005 (M-II) dated 02.02.2005 passed by the Commissioner of Central Excise (Appeals), Chennai).

M/s. SRF Limited — Appellant

Vs.

CCE & ST, Chennai — Respondent

Appearance

Ms. Sweta Giridar, Advocate,
for the Appellant

Shri R. Subramaniyam, AC (AR)
for the Respondent.

CORAM :

Hon'ble Smt. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri B. Ravichandran, Member (Technical)

Date of Hearing/Decision: 17.11.2017

FINAL ORDER No. 42947/**2017**

Per: B. Ravichandran

The appeal is against the order dated 02.02.2005 of the Commissioner of Central Excise, Chennai.

2. The appellants are engaged in the manufacture of Steam, Nylon chips, Nylon Filament yarn and Nylon Tyrecord fabrics liable

Customs, Excise & Service Tax Appellate Tribunal to Central Excise duty. They were also availing Cenvat credit on various input services. Some of the final products are cleared by them on stock transfer basis without payment of duty availing exemption under Notification No. 6/2002-CE dated 01.03.2002. Since the appellants did not maintain separate accounts while availing Cenvat credit on common inputs and services, they have discharged an amount of 8% on the same value of exempted goods cleared as mandated under Rule 6 (3)(b) of Cenvat Credit Rules, 2002. In the document covering the exempted goods, the appellant ~~are~~ shown the said reversed amount also as Cenvat (BED) with a remark "amount of duty payable on steam an exempted product under Notification No. 6/2002-CE, Rule 6 (3) (b) of CCR,2002".

3. Revenue entertained a view that the appellants have collected an amount representing Central Excise duty and the said amount should be deposited with the Government in terms of Section 11 D of the Central Excise Act, 1944. The original authority confirmed the said view.

4. The Ld. Counsel appearing for the appellants submitted that they have recovered the amount reversed in terms of Rule 6 (3) (b) from the buyer. This cannot be considered as recovery of amount representing Central Excise duty attracting the provisions of Section 11 D. She relied on the Circular dated 16.05.2008 of

the Board and as per the decision of the Tribunal in *Unison Metals Ltd. Vs. CCE, Ahmedabad* – 2006 (4) STR 491 (Tri.-LB).

5. The LD. AR contested the appeal on the ground that the invoices issued by the appellant clearly show the amount as "Cenvat (BED)". In terms of Section 11D, any person collecting any amount representing the same as excise duty shall deposit the said amount to the Government. These provisions have been made applicable to the present facts of the case. He submitted that the earlier reversal of credit is mandated as per Rule 6 and the present recovery is covered by Section 11D.

6. We have heard both sides and perused the appeal records.

7. We note that though the clearance documents mentions the amount as Cenvat (BED), it is clearly endorsed that the amount is towards ~~duty~~ amount payable on exempted products, steam, in terms of Rule 6 (3) (b). This makes it clear that the appellant passed on the burden of their reversal of the amount in terms of CCR, 2002 to the buyers. The Tribunal in *Unison Metals Ltd.* (supra), categorically held that the amount already deposited under Rule 57 C (c) of the CER, cannot be brought under Section 11 D. The amount stands already paid to the Revenue and no amount is retained attracting Section 11 D in such situation. We note that the provisions of Rule 6 (3) (b) are similar to erstwhile Rule 57 C (c). The Board's circular dated 16.05.2008 also supports the said reasoning. The amount of 8% already reversed as per the Cenvat

Credit Rules cannot be demanded under Section 11 D, even if the same is collected from the buyers, as per the invoices.

8. In view of the above discussion and analysis, we set aside the impugned order and allow the appeal with consequential relief.

(Order dictated and pronounced in the Open Court)

17.11.17.

(B. RAVICHANDRAN)
MEMBER (TECHNICAL)

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

BB

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Customs, Excise & Service Tax Appellate Tribunal