CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNALSOUTH ZONAL BENCH CHENNAI

Appeal No.E/802/2007

[Arising out of Order-in-Appeal No.68/2007-CE dt. 30.08.2007 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Coimbatore]

Texair Appellant

Versus

Commissioner of Central Excise,
Coimbatore Respondent

Appearance:

Shri K. Subash Chandran, 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 :**14.07.2017**
Date of Pronouncement : 25-07-2017

FINAL ORDER No. 41256/2017

Per Bench

The appellants are manufacturers of Plastic Injection Moulding Machines falling under erstwhile Chapter sub-heading No.8477.10of the Central Excise Tariff Act, 1985. During the visit of Central Excise Officers, it was noticed that the appellants, were manufacturing certain Aluminium components on job work basis for M/s.Janatics India (P) Limited (JIPL) in the adjacent premises which was separated from themain area, with credit availed materials/capital gods of M/s.JIPL apparently without informing the Department, claiming exemption of duty for the above goods and also without maintaining any accounts for the receipt and disposal of inputs/capital goods on which credit had been availed by M/s.JIPL, as required under the Central Excise Rules. It also appeared that appellants had diverted their machine tools on which they had availed cenvat credit of Rs.36,077/- for the exclusive use of manufacture of goods on job work basis, and that they had manufactured a "Component Washing machine" and some other capital goods and used them exclusively in the manufacture of said exempted job worked goods without paying any Central Excise duty. It also appeared that the appellants falsified challan No.11346 dt. 1.8.2000 and 13927 dt. 28.8.2000 of M/s.JIPL by stating that the machineries obtained were all returned to them whereas the same was found to be remained in the said additional premises. Subsequently, the component washing machine, fabricated structures as also goods covered by challan No. 11346 dated 1.8.2000 and 13927 dated 28.8.2000 were placed under the seizure on 2.2.2001. A show cause notice dt. 23.1.2002 was issued to the appellant proposing disallowance of cenvat credit of Rs.36,077/-, demand of differential duty Excise duty of Rs.62,100/- on "component washing machine" along with interest

Customs, Excise & Service Tax Appellate Tribunal thereon,confiscation of the goods seized and imposition of penalties under various provisions of Central Excise law.

2. In adjudication, original authority vide an order dt. 31.01.2007 confirmed the above proposals, confiscated the seized goods, with option to redeem the same with redemption fine of Rs.25,000/- and imposed equal penalty of Rs.98,177/- along with interest as applicable. Appeal filed to Commissioner (Appeals) was dismissed vide impugned order dt.30.08.2007. Hence the appellants are before this forum.

3. On 14.07.2017, when the matter came up for hearing, appellant was represented by Ld. Counsel, Shri Subash Chandran. At the outset, Ld. Advocate contended that officers who visited the appellant's premises were not the jurisdictional officers and had done so without permission from their Divisional Officer. On this ground, Ld. Advocate raises objection to the propriety of the proceedings initiated by department.

4. In response, on behalf of department, Ld. A.R Shri B.Balamurugan submits that the concerned Superintendent of Central Excise had been granted permission to visit the appellant's unit. He draws attention to letter dt. 12.05.2017 of the O/o Commissioner of Central Excise, Customs & Service Tax, Coimbatore wherein this aspect has been clarified and wherein it is also clarified that there is no infirmity in the visit made by the said Superintendent.

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5. In the circumstances, the Ld. Advocate was advised to argue the matter on merits.

6. On merits, Ld. Advocate made a number of submissions which can be summarized as under :

(i) Existence of additional premises was within the knowledge of the department. Appellant had filed a declaration dt.12.01.2001 under Rule 173B of erstwhile Central Excise Rules, 1944 for the manufacture of component washing machine.

(ii) Regarding allegation that appellant had diverted the machine tools on which they had availed modvat credit for use solely in manufacture of wholly exempted goods, appellant was actually carrying out drilling, tapping, grinding etc. operations for their components required for making their final product at the newly added premises. No evidence has been placed on record to show that appellant used modvated capital goods solely for purposes of manufacture of wholly exempted goods.

(iii) With regard to component washing machine, appellant had filed declaration on 09.01.2001 under Rule 173B informing about manufacture of said machines, and other two machines.

(iv) In any case, component washing machine was a new capital goods developed by them in-house and was only undergoing trial run. It was not yet a finally approved complete machine. It is also not alleged that they have sold such machine to any person. The machine has specific usage and cannot be said to be otherwise marketable.

(v) Regarding allegation that appellant falsified the challans of Janatics for capital goods, it is contended that six months time given in the appropriate Central Excise Rules was not yet over. Capital goods can be with job worker for six months.

7. On the other hand, Ld. A.R supports the impugned order and also made oral submissions as follows :-

(i) The appellant had applied for amendment after registration certificate, adding adjacent place. In the said request, appellant had stated that the adjacent premises is added for the purpose of job work-manufacture of exempted goods. The capital goods which were found in the adjacent premises therefore were used only for manufacture of exempted goods and thus the contention of the appellant that they were using the capital goods for manufacture of both exempted as well as dutiable goods is false and incorrect.

(ii) With regard to demand of component washing machine, the Ld. A.R submitted that appellants have admitted manufacture of such washing machine but are only contending that it is on trial and run basis. It is not stated what are the steps needed for completion of the said washing machine. The demand is raised based on the valuation made in the detention mahazar which is right and proper. Therefore demand raised on the ground that capital goods "machine tools" had been diverted to adjacent premises and solely used for the manufacture of exempted goods is correct and proper. So also the demand raised on component washing machine and other capital goods "stools, racks, tray stands etc." is also sustainable.

(iii) The challans relating to goods received from the job worker bore entries for return of the same on 29.08.2000. However, the same machineries were found lying in the premises in full operation during the time of visit of department officers.

(iv) With regard to contention on the valuation adopted for component washing machine, the department had taken market value of the goods for the purpose of determining the assessable value.

8. Heard both sides and have gone through the facts.

9. The denial of cenvat credit of Rs.36,077/- has arisen on the ground that appellant had used capital goods exclusively in manufacture of Aluminium components on job work basis in terms of Rule 57R (1) of erstwhile Central Excise Rules, 1944. The lower appellate authority has held that appellants have not disputed the ineligibility of the modvat credit. We find that on the contrary, appellants have vehemently disputed the allegation and have contended that the capital goods have been used for manufacture of exempted as well as non-exempted goods. Appellants have also contended that during adjudication they had challenged this allegation on the ground that no evidence has been placed on record to show that they had used the modvated capital goods solely for

purpose of manufacture of wholly exempted goods, but that the same was not considered. From a perusal of the order of the original authority, it is seen that appellant had contended that they were carrying out drilling, taping, grinding etc. operations for their components required for making their final product at the newly added premises. The appellant had also contested the valuation of the capital goods, taken as Rs.3,88,125/-, contending that value of the said capital goods should not be more than Rs.44,073/-. However, these averments of the appellants have neither been adequately considered nor have been suitably rebutted by lower authorities. It is seen that on the matter of component washing machine, the appellant has been crying hoarse right from the initial adjudication proceedings that the said item was a new concept conceived and developed by them, that the same was under development, the design of the same was not yet frozen and therefore said machine was not a completely manufactured machine. We find merit in this contention. There is no allegation by department that the appellant had earlier manufactured and sold such component washing machines or for that matter, whether the said item found in the premises being utilized in the regular manufacturing operations. The averment of the appellant that it was only a prototype under development has also not been adequately countered by any of the lower authorities.

10. In the circumstances, it would not be just and fair to tax the appellant for an attempt at innovation, especially when that attempt was still in process and had not culminated in manufacture of a complete and fully functional machine.

11. Department has also contended that goods covered under challan Nos. 11346 dt. 1.8.2000 and 13927 dt. 28.8.2000 in respect of machines supplied by Janatics India were not returned to them and found in the appellant's additional premises and therefore appellants have falsified the challans. On the other hand, appellants have countered that the six months period for return of capital goods had not yet been completed. Department has also not alleged or imputed that challans of M/s.Janatics India Ltd. themselves were false or concocted. In the circumstances, the mere addition of entry in such challans, especially considering that the prescribed period for return was still not over, would only lead to a technical infraction.

12. In view of the discussions herein above, we find in favour of the appellant. Accordingly, the impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law.

(pronounced in court on 25-07-2017)

(Madhu Mohan Damodhar)
Member (Technical)

(SulekhaBeevi C.S)
Member (Judicial)

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Customs, Excise & Service Tax Appellate Tribunal

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