CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NO.26,Sashtri Bhavan Annexe Building, Haddows Road,Chennai-600006

Order Forwarding Letter

Final Order No. 42427 / 2017

Appeal No. : E/724/2009-DB

CESTAF 22 NOV 2017 CHENNAI-6

Appellant :	Respondent :
Exotech Plastics Pvt Ltd	**Commissioner of Central Excise – Chennai - III**

I am directed to send herewith a certified copy of the **Final Order No. 42427 / 2017** dated **21/09/2017** ,passed by the Tribunal under Section 129 B of the Customs Act 1962/Section 35C of the Central Excise Act 1944/Section 86 (7) of the Finance Act 1994.

Assistant Registrar
CESTAT - Chennai

Dated: 09/11/17

To:

Exotech Plastics Pvt Ltd
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Guduvancherry
Chengalpattu - 603202
Tamil Nadu

Makorand P S Joshi
Flat No. 463
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Copy forwarded to :

Commissioner of Central Excise – Chennai - III

Commissioner of Central Excise - Chennai (Appeals)

The Commissioner (AR) , CESTAT Chennai.

Indirect Tax Bar Association CESTAT, Chennai

1) M/s. Centax Publications (P) Ltd.

2) M/s. Company Law Institute of India (P) Ltd.

3) M/s. Taxindiaonline.com (P) Ltd. Chennai.

4) M/s. Tax Man Allied Services Ltd New Delhi.

5) M/s. Easy Services Tax Online.Com (P) Ltd Ahmedabad.

6) M/s. Lawcrux Advisors (P) Ltd. Faridabad.

7) M/s. Mark Professional Services (P) Ltd.

8) M/s. The ICFAI Society, Hyderabad

9) M/s. Knowledge Processing Pvt Ltd., Delhi

10) M/s. Taxongo Pvt Ltd.

11) Guard File.

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

E/724/2009

[arising out of Order-in-Appeal No.29/2009 (M-III), dated 27.08.2007 passed by the Commissioner of Central Excise (Appeals), Chennai]

M/s. EXOTECH PLASTICS PVT. LTD. APPELLANT

Versus

COMMISSIONER OF CENTRAL EXCISE, CHENAI-III RESPONDENT

Appearance:

For the Appellants Shri Makarand P.S. Joshi, Adv.
For the Respondent Shri B. Balamurugan, AC (AR)

CORAM:

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

Date of hearing/decision **21-09-2017**

FINAL ORDER NO. 42427/2017

Per Bench:

The brief facts of the case are that the appellants are engaged in the manufacture of parts of motor vehicles such as Deck Lid handle, Radiator Grill assembly etc., falling under Central Excise Tariff Act, 1985. The plastic moulded parts manufactured at the appellant's Unit-I & II, Pune are transferred to Unit-III situated at Chennai on payment of duty, which are then assembled using the free issue materials viz., Lamp Assemblies received from M/s. Ford India Ltd., [hereinafter referred to as "M/s. FIL"]. After carrying out painting job at M/s. Mothersun Automotive India Ltd., Chennai, [hereinafter referred to as "M/s.MAIL"] the parts are packed and dispatched to M/s. FIL.

Customs, Excise & Service Tax Appellate Tribunal

2. It appeared to the Department that the appellants failed to amortize and include the money value of tool cost and free issue materials like lamp assemblies, which were supplied free of cost by M/s. FIL, in the assessable value of the said parts supplied to M/s. FIL for "Fiesta Cars." It also appeared from certain input invoices of appellant's Unit-III (Sales Invoice of Unit-I), that the appellant's Unit-I had over-valued the value of 'prime surrounds' based on which excess Cenvat credit has been availed by the appellants. Hence, a show-cause notice was issued to the appellants to confirm and appropriate the differential duty and Cenvat credit paid/reversed, besides demanding interest under section 11AB of the Central Excise Act, 1944 and imposition of penalty under section 11AC of the Act and Rule 25 and 15 of the Cenvat Credit Rules, 2004. After due process of law, the original authority vide order dated 28.09.2007 confirmed demand of differential duty of Rs.12,33,320/- along with interest thereon, imposed penalties of Rs.10,000/- under Rules 25 and 15 of the Cenvat Credit Rules, 2004 and also imposed penalty equal to differential duty under section 11AC of the Act.

3. In appeal, the Commissioner (Appeals) vide the impugned order dated 27.08.2007, upheld the order of original authority and rejected the appeal. Hence the appellants are before this forum.

4. On 21.09.2017, when the matter came up for hearing, on behalf of the appellants, Ld. Advocate Shri Makarand P.S. Joshi submits that department has alleged that they had not amortized and included the money value of tool cost and free issue materials like lamp assemblies, which were issued free of cost by M/s. FIL, in the assessable value of the said parts manufactured by them. Department

has also alleged that their Unit-I has inputs valued at Rs.110/- instead of the actual value of Rs.80/- to Unit-III to enable the Unit-III to avail excess credit amounting to Rs.94,727/-. The differential duty involved is Rs.12,33,320/- on this issue.

5. Ld Advocate submits that they have already paid-up the said liabilities before issue of the show-cause notice and that at this stage the appellants are not contesting the tax liability of Rs.12,33,320/- and the disputed credit amount of Rs.94,427/-. Ld. Advocate however, contends that they have not suppressed any information to the department and the transactions between the Units was only an internal arrangement, which is revenue neutral. For these reasons, Ld. advocate prayed that the penalties should be set aside.

6. On the other hand, the Ld. AR Shri B. Balamurugan supports the adjudication.

7. Heard both sides and have gone through the records.

8. Indubitably, the appellants were in error in not including the money value of the free issue materials and not amortizing the money value of tools issued free of cost by M/s. FIL. Nonetheless, it clearly emerges that their gaffe was only on account of procedural misunderstanding and misinterpretation of law. There is no allegation that appellants had been indulging in clandestine removal of goods without payment of duty. The differential duty liability has only arisen because of non-inclusion of money value of free issue materials. From the statement recorded from the verification certificate of the appellant dated 03.04.2007, it emerges that the said official had stated that this was an inadvertent lapse on their part and that on being pointed out,

they had immediately debited duty liability. The appellant has also reversed excess credit availed from Unit-III.

9. We then find that there is a case for leniency in the matter of imposition of penalties, for which reason, we set aside the imposition of penalties under section 11AC of the Central Excise Act, 1944 and under Rule 25 of Cenvat Credit Rules, 2002/Rule 15 of the Cenvat Credit Rules, 2004, however, subject to confirmation that interest has also been paid on the confirmed duty/credit amounts.

(Dictated and pronounced in open court)

Sulekha Beevi

(MADHU MOHAN DAMODHAR)
MEMBER (TECHNICAL)

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

प्रमाणित प्रति / Certified True Copy
17/11
सहायक पंजीकार / Asst. Registrar
सीमाशुल्क उत्पादशुल्क एवं सेवा कर
अपील अधिकारी / (CESTAT)
चेन्नै / CHENNAI

ksr
23-10-2017

Customs, Excise & Service Tax Appellate Tribunal
सत्यमेव जयते