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

**E/64/2008**

(Arising out of Order-in-Appeal No.101/2007 (M-IV) dated 30.10.2007 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. Sundram Fasteners Ltd. Plant III — Appellant

Vs.

Commissioner of Central Excise, Chennai – IV — Respondent

Appearance

Shri M. Kannan, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

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

Date of Hearing / Decision: **04.08.2017**

Final Order No. 41500/2017

**Per Bench**

The appellants M/s. Sundram Fasteners Ltd. (SFL – III) are engaged in the manufacture as well as export of goods. The appellant, SFL-III unit was bifurcated into two units SFL-III and SFL EOU Unit. Both these units were adjacent to each other. In order to establish the EOU, SFL-III had placed orders for items meant for export of products. The suppliers themselves sent the inputs meant for export of goods to SFL-

Customs, Excise & Service Tax Appellate Tribunal

III, even though the goods were intended to be supplied to EOU Unit. This happened because the purchase orders had been issued before such bifurcation. On the above documents for supply of goods, the appellant unit SFL-III availed credit. However, such goods were subsequently transferred to the EOU Unit. Due to inadvertence, the credit originally availed was not reversed. While the commercial production in EOU started in 2004, there had been transfer of inputs from SFL – III and at that time the appellant realized about the credit availed for items which had been dispatched to EOU, for which the credit was not reversed. When the officers visited the premises of SFL-III on 25.7.2005, the above facts were brought to their knowledge and the appellant had furnished all details. They also undertook to reverse the credit and immediately the appellant reversed the credit of Rs.15,49,876/- on 1.8.2005 towards irregularly availed credit of Rs.19,43,072/-. However a show cause notice was issued dated 23.1.2006 proposing demand of Rs.19,43,072/- for the period 10/2004 to 6/2005. After adjudication, the original authority confirmed the demand along with interest and also imposed penalty. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, learned counsel Shri M. Kannan submitted that the appellants inadvertently did not reverse~~d~~ the credit though the inputs/capital goods were

transferred to the EOU Unit. However, the appellant had not suppressed any facts and had handed over the work sheet details of the credit availed and liable to be reversed by them when the officers visited the premises on 25.7.2005. That, therefore, the show cause notice issued invoking the extended period is not sustainable. He pleaded that the appellant had no intention to evade payment of duty since the entire exercise was revenue neutral situation and therefore the penaltiy may be set aside. To canvass this proposition, he relied upon the judgment of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise, Vadodara Vs. Indeos Abs Limited – 2010 (254) ELT 628 (Guj.).

3. The learned AR Shri S. Govindarajan reiterated the findings in the impugned order. He submitted that the appellant though had transferred the inputs / capital goods to the EOU, had not reversed the credit. That therefore the demand is legal and proper.

4. Heard both sides.

5. It is not disputed that the inputs / capital goods received in SFL-III Unit was transferred to EOU Unit. In such circumstances, the appellant unit namely SFL-III has to reverse the credit. Soon after being pointed out, the appellants have reversed credit of Rs.15,49,876/- only. We, therefore, do not find any ground to interfere with the demand made by the

authorities below. However, since the situation is entirely a revenue neutral situation, being inter-unit transfers, we are of the view that the penalty imposed is unwarranted. We, therefore, set aside the penalties imposed under Rule 15(2) of CENVAT credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The impugned order is modified to the above extent of setting aside the penalty alone without disturbing the demand of CENVAT credit or interest thereon.

6. In the result, appeal is partly allowed in the above terms.

(Operative portion of the order was pronounced in open court)

Sulekha Beevi

**(Madhu Mohan Damodhar)**
Member (Technical)

**(Sulekha Beevi C.S.)**
Member (Judicial)

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