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

E/607/2009 and ST/572/2010

(Arising out of Order-in-Appeal No. 100/2009- C.Ex. dated 31.7.2009 and Order-in-Appeal No. 71/2010-CE dated 31.5.2010 both passed by the Commissioner of Central Excise (Appeals), Coimbatore)

M/s. Perfect Engineers — Appellant

Vs.

Commissioner of Central Excise, Coimbatore — Respondent

Appearance

Shri M. Karthikeyan, Advocate for the Appellant
Shri K. P. Muralidharan, 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: **31.08.2017**

Final Order No. 42117-42118/2017

Per Bench

Brief facts are that the appellants are engaged in the manufacture of power driven pumps for handling water and electric motors and are clearing the same on payment of duty. They also avail the facility of CENVAT credit on inputs which was utilized for the payment of excise duty on the final products. The appellants cleared the waste and scrap arising in

Customs, Excise & Service Tax Appellate Tribunal the course of manufacture of the pumps at nil rate of duty by availing the benefit of Notification No. 10/2003 dated 1.3.2003 and 10/2006 dated 1.3.2006. Since the waste and scrap attracts nil rate of duty, the department instructed the appellant to pay 10% of the value of scrap as provided in Rule 6(3)(b) of CENVAT Credit Rules, 2004 as the appellants were not maintaining separate accounts. Thus reversed the credit of Rs.7,24,026/-. The appellant thereafter came to understand that they are not liable to reverse the credit, since they are not manufacturing any exempted products and that waste and scrap cleared by them under nil rate of duty is not exempted goods manufactured by them. Consequently, they filed a refund application for Rs.7,22,237/- being the amount debited from the CENVAT credit towards 10% of the value of the credit as directed by the department. After due process of law, refund sanctioning authority rejected the refund claim filed by the appellant. In appeal, Commissioner (Appeals) upheld the same. Hence, appellant has filed Appeal No. E/607/2009.

2. Since the appellant had reversed only the amount of Rs.7,24,026/-, the department was of the view that the appellant is liable to pay interest upon the same and also penalty and thus issued show cause notice demanding interest and for imposing penalty. After adjudication, the original authority confirmed the demand of interest to the tune of

Rs.91,817/- and imposed penalty of Rs.40,000/-. In appeal, Commissioner (Appeals) upheld the same. Being aggrieved with the demand of interest and penalty, appellant has filed Appeal No. ST/572/2010.

3. On behalf of the appellant, ld. Counsel Shri M. Karthikeyan submitted that the issue whether the appellant is liable to pay duty on waste and scrap is decided by the Hon'ble Supreme Court in the case of Grasim Industries Ltd. Vs. Union of India - 2011 (273) ELT 10 (SC). Therefore appellant is not liable to maintain separate accounts as required in Rule 6 of CENVAT Credit Rules, 2004, since the appellant is not clearing dutiable and exempted products. The allegation that the waste and scrap cleared by the appellant is an exempted product and therefore appellant has to maintain separate accounts is erroneous. The appellant is eligible for the amount reversed towards payment of 10% of the waste/scrap cleared by the appellant for the relevant period. The appellant had reversed the credit only on the insistence of the department. However, that since the appellant is not liable to reverse such credit, they are also not liable to pay interest or penalty.

3. Ld. AR Shri K.P. Muralidharan reiterated the findings in the impugned order.

4. Heard both sides.

Customs, Excise & Service Tax Appellate Tribunal

5. It is indeed correct that the Hon'ble Supreme Court in various decision as held that waste and scrap which arises during the course of manufacture of the final products cannot be considered as a product intended to be manufactured by the appellant. It is merely a by-product that emerges as inevitable consequence of manufacturing process and therefore the appellant is not liable to pay duty on such waste and scrap. On such score, the appellant is not liable to reverse the credit and is eligible for the refund. The impugned order rejecting the refund is set aside. Consequently, the appellant is not liable to pay interest or penalty imposed. The impugned order demanding interest and penalty is also set aside. Both appeals are allowed with consequential relief if any.

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

Sulekha Beevi

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

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

Rex

Central Excise & Service Tax Appellate Tribunal (Chennai)

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