IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 41747 of 2013

(Arising out of Order-in-Appeal No. 182/2013 (M-IV) dated 26.04.2013 passed by the Commissioner of Customs, Central Excise & Service Tax (Appeals), 26/1, Mahatma Gandhi Marg, Nungambakkam, Chennai – 600 034)

M/s. Starpac India Limited **: Appellant**
Shed No. 35, SIDCO Industrial Estate,
Thirumudivakkam, Chennai – 600 044

VERSUS

Commissioner of Central Excise **: Respondent**
Chennai-IV Commissionerate
692, M.H.U. Complex, Nandanam, Chennai – 600 035

APPEARANCE:

Shri P.C. Anand, Chartered Accountant for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40524 / 2023

DATE OF HEARING: 01.05.2023

DATE OF DECISION: 28.06.2023

Order : [Per Hon'ble Mr. P. Dinesha]

Brief facts forthcoming from the Order-in-Original as well as the impugned Order-in-Appeal are that the appellant is engaged in the manufacture of Packing Machinery and parts and is availing CENVAT Credit in terms of the CENVAT Credit Rules, 2004. It appears that there was a scrutiny of input invoices of the appellant, during which time the scrutiny team appears to have noticed that the appellant had removed its finished product namely, Packing Machinery, valued at Rs.25,67,500/- on payment of duty of Rs,3,49,450/- (BED), Education Cess, etc., for

display in an exhibition. It appears that the goods were received back per Invoice dated 29.11.2008 and the credit of duty paid by them at the time of clearance was taken in their CENVAT Account in terms of Rule 16(1) of the Central Excise Rules, 2002. It appears that later on, the goods were removed as such on payment of duty on 31.01.2009, along with applicable cess. It appeared that since duty paid was less than the amount of credit taken, the Revenue entertained a doubt that in terms of Rule 16 (2) *ibid*., the process which the goods were subjected to before being removed did not amount to manufacture and therefore the manufacturer should pay an equal amount of the CENVAT Credit taken under Rule 16(1).

2. Entertaining a doubt that since the machinery was not subjected to any manufacturing process after being received back from the exhibition and cleared as such, the assessee was liable to pay equal amount of duty, A Show Cause Notice dated 08.09.2010 was issued proposing to demand differential duty along with applicable interest and penalty.

3. It appears that the assessee filed a detailed reply dated 19.10.2010 seriously rebutting the proposal of the Revenue to demand differential duty. The crux of the reply appears to be that: -

(i) The goods were removed for display during which a price was adopted and the duty was paid on that price. At the time of clearance second time, the goods were sold and the duty was paid accordingly on the sale value and hence, the two values should not be compared.

(ii) The machinery had underwent considerable wear and tear during the exhibition and therefore, the same had to be brought into its original form before being removed, including testing and checking of the machinery on return, which amounted to the reprocessing.

(iii) When the machine was cleared a second time, the rate of duty changed since the sale price was less.

(iv) They have been filing monthly E.R.-1 returns regularly and hence there was no question of any suppression of any facts, with an intention to evade tax.

(v) Reliance was placed on a decision of Delhi Tribunal in the case of *M/s. HMT Ltd. v. Collector of Central Excise, Jaipur [2002 (150) E.L.T. 928 (Tri. – Del.)].*

4. Not impressed by the reply of the appellant, it appears that the adjudicating authority proceeded vide Order-in-Original No. 13/2011 dated 25.01.2011 to demand the differential duty as proposed in the Show Cause Notice, in terms of Rule 16 (2) of the Central Excise Rules, 2002 read with proviso to Section 11A (1) of the Central Excise Act, 1944. Appropriate interest was also demanded under section 11AB, apart from penalty under section 11AC *ibid.*

5. Aggrieved by the said order, it appears that the appellant preferred an appeal before the first appellate authority, but however, even the first appellate authority, having dismissed the appeal vide impugned Order-in-Appeal No. 182/2013 (M-IV) dated 26.04.2013, the present appeal has been filed before this forum.

6. Heard Shri P.C. Anand, learned Chartered Accountant for the appellant, and Shri N. Satyanarayanan, learned Assistant Commissioner for the Revenue.

7.1 Ld. Chartered Accountant would submit that there was a time span of nearly two months between the two invoices, during which time there had been a change in the rate of excise duty. Further, the process undertaken by the assessee was re-making, refining, re-conditioning or for any other reason, the earlier duty payment taken as credit

would be fully available to the appellant, which is in accordance with Rule 16 (1) of the Central Excise Rules.

7.2 Support was drawn from an order of the co-ordinate Delhi Tribunal, in the case of *M/s. Maruti Udyog Ltd. v. Commissioner of Central Excise, Delhi-III [2016 (332) E.L.T. 879 (Tri. – Del.)].*

8. *Per contra*, Ld. Assistant Commissioner relied upon the findings given by the lower authorities. He also invited our attention to the dates of the two invoices, the assessable value declared and the rate of duty which, according to him, had resulted in lesser amount of duty being paid; therefore, the demand of differential duty was very much in order and also in terms of Rule 16 (2) *ibid.*

9. After hearing both sides, we find that the only issue to be decided by us is: whether the appellant is liable to pay the duty equivalent to the CENVAT Credit availed when the goods were returned to the factory or to pay the applicable rate of duty for removal of any normal goods in terms of sub-section (2) to Section 3 or Section 4 or Section 4A of the Central Excise Act, 1944?

10. We have perused the orders of lower authorities, we have also gone through the copy of invoices placed on record and the judicial precedents referred to during the course of arguments.

11.1 At the time of first removal, the invoice raised contains the description as "Double Head Fully Automatic Linear Pick Fill & Seal Machine for pre-formed pouches". In the specification sheet attached to the above invoice, it is mentioned as "Filler: Piston Pump With Servo Driven".

11.2 In the second invoice, though the description remains the same, but it is mentioned as "Non-Servo Driven Filler" and the customer is clearly identified.

11.3 Thus, the main difference between the machine when it was returned from the exhibition and that which

was sold subsequently is on account of the change in the piston pump. The machine which was sent for exhibition was fitted with Servo Drive whereas it was changed to Pneumatic Drive when it was subsequently sold and cleared. The minor difference, as apparent, in the valuation of the invoices, as given in the table below, is on account of replacement of the Servo Drive with Pneumatic Drive:

Invoice for dispatch of machinery for exhibition (with Servo Drive)		Invoice for dispatch of machinery subsequently (with Pneumatic Drive)	
Invoice No. SI-192 dt. 29.11.2008		Invoice No. SI-287 dt. 31.01.2009	
Assessable value	2567500	Assessable value	2531500
Excise Duty 14%	359450	Excise Duty 10%	253150
Ed. Cess 2%	7189	Ed. Cess 2%	5063
SHE Cess 1%	3595	SHE Cess 1%	2532
Total duties	**370234**	**Total duties**	**260745**

Reportedly, there was a change in the rate of duty applicable from the time when the machine was sent for exhibition to the time when it was actually sold, as apparent from the above table.

12. From the records, we do not see any dispute by the Revenue as to the fact or the contention of the appellant that upon receipt in the factory from the exhibition, the product had lost its originality or that the same required reprocess, etc., to bring it back to the original shape and only thereafter that the machine in question could be sold or removed as such. That means the product was brought back into the factory only to be re-processed and this claim of the appellant was never disputed by the Revenue.

13. We find that the appellant carried out the required process of quality inspection and replaced the Servo Driven Filler with a Pneumatic Driven Filler. Further, the original machine that was made, was sent to the exhibition, which was brought back and after elapsing of some time, the machine was sold and cleared like any other excisable

goods. That being the case, we do not find any contravention of the Valuation Rules by the appellant, as an important part of the machine sold has been replaced with a less advanced component, slight reduction in the value of the machine sold is found to be normal.

14. In view of the above, the impugned order demanding differential duty of Rs.1,09,489/- is not sustainable and so, set aside. Accordingly, the penalty imposed is also set aside.

15. In the result, the appeal is allowed with consequential relief, as per law.

(Order pronounced in the open court on **28.06.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd