CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 50526 of 2019 [SM]

[Arising out of Order-in-Appeal No. 517(SM)CE/JPR/2018 dated 06.12.2018 passed by the Commissioner Custom & CE, Jaipur]

M/s Balkrishna Industries Ltd.
SP-A-300-303 & 308-3013
RIICO Industrial Area,
Chopanki,
Bhiwadi-301 019 (Raj.) **...Appellant**

Vs.

Commissioner of Central Goods and
Service Tax, Customs & Central Excise
Commissionerate, Block-A
Surya Nagar,
Alwar – 301 001 (Raj.) **...Respondent**

APPEARANCE:

Ms. Shagun Arora, Advocate for the Appellant
Mr. Pradeep Gupta, Authorised Representative (DR) for the Respondent

Coram: HON'BLE MRS. RACHNA GUPTA, MEMBER (JUDICIAL)

DATE OF HEARING : 23.12.2019
DATE OF DECISION : 23.12.2019

FINAL ORDER No. 51801/2019

RACHNA GUPTA

The present appeal has been filed to assail an order in appeal No. 517/2018 dated 06.12.2018.

The relevant factual matrix in brief for the purpose is that:

2. Appellants are engaged in manufacture of Tires (excisable as well as non-excisable). They are also the provider of taxable as well as non-taxable services. Department during the course of audit of the Appellant record observed that the appellant in addition to clearing the

tires/tubes (excisable goods). They are also clearing various kinds of non-excisable goods such as plastic scrap, used empty jumbo bags, sweeping garbage, MS Iron, empty drums, MS scrap, etc. This clearance has been noticed from March, 2015 to September, 2016.

2. They were also observed to have been availing CENVAT Credit of excise duty paid on the inputs as well as Service Tax paid on input services, however, without following Rule 6 of CENVAT Credit Rules, 2004(CCR 2004). Accordingly, a show cause notice No. 1453 dated 08.04.2017 was served upon the Appellant proposing the recovery of Rs. 5,68,876/- being payable under Rule 6 (3)(1) of CCR 2004 alongwith the interest and appreciate penalty. In addition an amount of Rs. 3,722/- was also proposed to be recovered with respect to common input services. However, in violation of Rule 6 CCR that too alongwith interest and the penalty, the said proposal was initially confirmed vide the Orde-in-Original No. 28/2017 dated 30.11.2017 the appeal thereof was dismissed vide the order-under-challenge. Being aggrieved the Appellant is before this Tribunal.

3. I have heard Ms. Shagun Arora, learned Counsel for the Appellant and Mr. Gupta, learned DR for the Department, it is submitted by the Appellant that there is no dispute about the fact that the Appellants are mainly the exporter. However, whatever final product is being cleared to domestic market, the excise duty thereupon has duly been paid.

4. It is impressed upon that, admittedly, the impugned goods are the waste of packing material/leftover packing material which is used to pack the final product that is variety of Tires and Tubes

manufactured by the Appellant before their export/domestic clearance. It is impressed upon that the said leftover/scrap is neither the exempted goods nor any difference is being created by the explanation one as was added to Rule 6 CCR, 2004 on 01.03.2015 alleging the demand confirmed to have been confirmed on wrong interpretation of the provision the order-under-challenge is prayed to be set aside. Ld. Counsel has laid emphasis upon Honda Motorcycle (supra) having identical facts to have been decided in favour of the assessee by this Tribunal. In addition the various other adjudications interpreting Rule 6 CCR has also been impressed upon that is :

1. M/s Kichha Sugar Company Ltd. Vs. CCE, 2018 (10) TMI 1151-CESTAT, New Delhi.
2. Honda Motorcycle and Scooter India Pvt. Ltd. Vs. CCE, Alwar, 2019 (4) TMI 743-CESTAT, New Delhi
3. Union of India Vs. DSCL Sugar Limited., 2015 (10) TMI 566-Supreme Court.
4. Devi Iron and Power (P) Ltd. Vs. Commissioner of Customs, CGST and Central Excise, Raipur, 2019 (5) TMI 1095-CESTAT, New Delhi
5. Sahyadri SSK Limited Vs. CGST Kohlapur, 2019 (10) TMI 1100-CESTAT Mumbai.

Order-under-challenge is accordingly prayed to be set aside and appeal is prayed to be dismissed.

5. While rebutting these arguments, learned DR has impressed upon para 6 and the concluding part of para 8 of the order-under-challenge emphasizing that Rule 6 CCR, 2004 is now applicable to the

products cleared by the Appellant in terms of notification No. 13/2016-CE dated 01.03.2016 in furtherance whereof explanation-1 to Rule 6 (1) was added to the statute. Justifying the impugned order and denying any infirmity therein the appeal is prayed to be dismissed.

6. After hearing both the parties and perusing the record, I find that the moot question to be adjudicated is as to whether the leftover of the packing material which was used by the Appellant to pack the Tires and Tubes manufactured by them is such exempted/non-excisable goods due to which Rule 6 CCR,2004 is applicable. For the purpose Rule 6 is looked into it reads as follows:

[Obligation of a manufacturer or producer of final products and a provider of [output service].

(1) The CENVAT credit shall not be allowed on such quantity of input as is used in or in relation to the manufacture of exempted goods or for provision of exempted services or input service as is used in or in relation to the manufacture of exempted goods and their clearance upto the place of removal or for provision of exempted services and the credit not allowed shall be calculated and paid by the manufacturer or the provider of output service, in terms of the provisions of sub-rule (2) or sub-rule (3), as the case may be : :

***Provided** that the CENVAT credit on inputs shall not be denied to job worker referred to in rule 12AA of the Central Excise Rules, 2002, on the ground that the said inputs are used in the manufacture of goods cleared without payment of duty under the provisions of that rule.*

Explanation 1.- For the purposes of this rule, exempted goods or final products as defined in clauses (d) and (h) of rule 2 shall include nonexcisable goods cleared for a consideration from the factory.

Explanation 2.- Value of non-excisable goods for the purposes of this rule, shall be the invoice value and where such invoice value is not available, such value shall be determined by using reasonable means consistent with the principles of valuation contained in the Excise Act and the rules made there under.

7. The bare reading makes it clear that two conditions need to be fulfilled for the applicability of Rule 6 that is :

1. Input/input services is commonly used in the manufacturer of excisable and exempted goods.

2. Such input/input services is used in or in relation to the manufacture of excisable and exempted goods.

8. Word manufacture acquires the utmost importance for the applicability of Rule 6 and the Rule is applicable if and only if the Appellant is manufacturing exempted as well as excisable goods and the input/input services are commonly used for both kind of manufacture.

9. Apparently and admittedly, the goods as have been objected by the department are not the manufactured goods. These are merely the inputs that too in the form of the material used by the Appellant to pack their final product. This particular observation is sufficient to hold that the impugned goods i.e. plastic scrap, used empty jumbo bags, sweeping garbage, MS Iron, empty drums, MS scrap, etc. do not fall in the category of goods manufactured by the Appellant. Irrespective the leftover of the packing material is being cleared by the Appellant against the consideration, these goods is not at all sufficient to hold the same to be called as the manufactured good of the Appellant.

10. The controversy stands settled way back by the Hon'ble Apex Court in the case of **West Coast Industries Gases Ltd. Vs. CCE reported as 1999(112) ELT 12** wherein it was held that no duty could be demanded on the containers used for packing of input on which credit has been taken when cleared from the factory of the manufacturer availing credit as these containers could not be treated as scrap or waste arising out of the manufacturing process. The issue has recently been dealt with by Bangalore Bench of this Tribunal in the case of **Jamipol Ltd. Vs. Commissioner of Central Tax, Belagavi**

Commissionerate reported as 2019 (12) TMI 550 – CESTAT Bangalore wherein it was held that empty drums as have been cleared against consideration do not require reversal of credit for the simple reason that the drums are not the manufactured goods. Hence, do not qualify the applicability of Rule 16.

11. This decision is post incorporation of explanation-1 in Rule 6 (1) CCR, 2004. The hon'ble Apex Court had earlier given the clarity about scrap or waste products has even given the clarity about the scrap and waste products as emerged during the manufacturing process. In the case of **Union of India Vs. DSCL Sugar Ltd. reported in 2015 (10) TMI 566** Hon'ble Apex Court while explaining the meaning of manufacture as contained in Section 2F of the Central Excise Act, 1944 has held that any waste emerging compulsorily during the procedure of manufacture cannot be called as the manufactured products. As such the Rule 6, CCR is not applicable. Principle Bench of this Tribunal in **M/s Honda Motorcycle and Scooter India Pvt Ltd Vs. CCE, Alwar, 2019 (4) TMI 743** clarifies that the issue involved in the present appeal is no more resintegra. This case has almost identical facts. The Bench has even gone to the extent of explaining the difference that explanation one w.e.f 01.03.2015 to Rule 6 CCR has made. It has been held as follows:

A perusal of above Explanation-1 reveals that it merely includes non-excisable goods within the ambit of the term 'exempted goods'. At the same point of time, it fails to take non-manufactured goods into consideration. Simply out, Explanation 1 does not deem 'non-manufactured goods' as 'exempted goods' under Rule 2(d) of the Credit Rules. We agree with the contentions raised by the Appellant that Rule 6 requires reversal of credit only subject to satisfaction of twin conditions of manufacture and exempted goods. It is seen from the statutory provision that the Explanation 1, inserted with effect from March 1, 2015, includes 'non-excisable goods' in the definition of term 'exempted goods' in the following words:

"Explanation 1.- For the purpose of this rule, exempted goods or final products as defined in clauses (d) and (h) of Rule 2 shall include non-excisable goods cleared for a consideration from the factory".

In this context, it is noteworthy that aluminium dross has been held to be non-manufactured in **Hindalco Industries Limited Vs. UOI, 2015 ELT 10 (Bom.).** Further, much of the impugned scrap was not even involved in any sort of processing activity. As noted above, the impugned waste and scrap even if forming 'non-excisable goods' under Section 2(d) of the Excise Act, does not form parts of manufactured goods. Thus, Explanation does not affect the status of the impugned waste and scrap being not manufactured nor such waste and scrap can be considered as exempted goods.

The said explanation came to be interpreted by the Tribunal in the case of **Kichha Sugar Company Limited Vs. CCE, 2018 (10) TMI 1151-CESTAT New Delhi** and it was held that even after insertion of the aforesaid Explanation, such goods cannot be treated as manufactured exempted goods.

12. In view of the entire above discussion and in view of the prior Circular of the department bearing No. 721/37/2003-CX dated 06.06.2003, I am of the opinion that explanation I to Rule 6 CCR, 2004 has been added to circumvent the outcome of the decision of

Hon'ble Apex Court in DSCL (supra) case. Accordingly, I hold that the confirmation of demand of Rs. 5,72,598/- on the left over/scrap of the input used by the Appellant, since Rule 6 is not applicable, the demand is not sustainable. The same is hereby set aside

13. With respect to the demand of Rs.3722/- with respect to common input services, since there is no denial for the Services as that of advertising services, legal services, director's fee, business auxiliary, etc. to be the common input services used by the Appellant in or in relation to the manufacture of their final product. I find no infirmity when the adjudicating authority below has confirmed the demand under Rule 6 CCR, 2004 to that extent the order under challenge is liable to be upheld.

14. Consequent to the entire above discussion, the order under challenge confirming the demand of Rs. 5,72,598/- is hereby set aside. However, confirmation of demand of Rs. 3722/- alongwith the interest and the proportionate penalty is hereby upheld. Appeal resultantly stands partly allowed.

[Dictated and Pronounced in the Open Court]

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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