

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.**

PRINCIPAL BENCH,
COURT NO. 1

EXCISE APPEAL NO. 52817 OF 2018

[Arising out of the Order-in-Appeal No. 26 (NG)/CE/JPR/2018 dated 16/02/2018 passed by Commissioner of Central Excise, Jaipur.]

M/s RMC Switch Gears Ltd.,
7 KM from Chaksu, Khotkawda Road,
Badodiya, Chaksu,
Jaipur (Raj.).

...Appellant

Versus

Commissioner of Central Excise,
Central Excise Commissionerate,
Jaipur.

...Respondent

APPEARANCE:

None for the appellant.

Shri Rakesh Agarwal, Authorized Representative for the
Department

CORAM:

HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT

HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 50143/2023

DATE OF HEARING : 19.12.2022

DATE OF DECISION: 17.02.2023

P.V. SUBBA RAO

Nobody appeared on behalf of the appellant despite notice.

We have heard Shri Rakesh Agarwal, learned Authorized
Representative for the Revenue and perused the records.

2. M/s RMC Switch Gears Ltd.¹ filed this appeal to assail the order dated 16.02.2018 passed by the Commissioner (Appeals), CGST & Central Excise, Jaipur, whereby he upheld the order-in-original dated 24.11.2015 passed by the Deputy Commissioner and rejected the appellant's appeal. The operative part of this order is as follows :-

- “(i) I disallow and order to recover Rs. 1,36,929/- (Cenvat Rs. 1,32,941/- + Edu. Cess Rs. 2,659/- + SHE Cess Rs. 1,329/-) wrongly availed and utilized cenvat credit by M/s RMC Switch Gears Ltd., 7 KM from Chaksu, Khotkawda Road, Badodiya, Chaksu, Jaipur under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with proviso to 11A (4) of the Central Excise Act, 1944.
- (ii) I also order to recover interest at an appropriate rate on the amount of Rs. 1,36,929/- under the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with Section 11 AB/11 AA of the Central Excise Act, 1944.
- (iii) I impose penalty under the provisions of Section 11AC of the Central Excise Act, 1944, read with Rule 15 (2) of Cenvat Credit Rules, 2004, a penalty equal to the Cenvat Credit wrongly availed and utilized by RMC Switch Gears Ltd., 7 KM from Chaksu, Khotkawda Road, Badodiya, Chaksu, Jaipur. However, benefit of reduced penalty of 25% as per provisions of Section 11AC ibid is available to the assessee subject to the condition that Cenvat credit wrongly availed and utilized payable for the period 20.03.2011 and the interest payable thereon under section 11AB/11AA ibid, is paid within thirty days from the date of communication of this order and further subject to the condition that the benefit of reduced penalty (25% of the demand so determined) shall be available if the amount of penalty so determined has also been paid within the period of thirty days from the date of communication of this order”.

3. The appellant is registered with the central excise department and manufactures boards, panels, cabinets etc. and pays central excise duty. It also avails Cenvat credit as per rules. During the investigation initiated at M/s Bhushan Steels Ltd., Ghaziabad who supplied HR Coils and other inputs to the

¹ appellant

appellant, it appeared that M/s Bhushan Steels had undertaken processes which did not amount to manufacture but had paid central excise duty. It further appeared that the duty so paid cannot be termed as duty, but only as an amount under section 11D of the Central Excise Act², 1944, which must be deposited with the Central Government. The Assistant Commissioner of Central Excise Division – I, Jaipur obtained the following details of invoices from the appellant :

Invoice No.	Date of Invoice	Value (Rs.)	Cenvat credit taken (Rs.)	Date of credit taken
0000069926	15.03.2011	5,21,680	52,573	20.03.2011
0000069927	15.03.2011	98,715	9,949	20.03.2011
0000069928	15.03.2011	3,49,948	35,267	20.03.2011
0000069929	15.03.2011	3,88,377	39,140	20.03.2011
		13,58,720	1,36,929	

4. A show cause notice³ dated 27.04.2015 was issued proposing to deny Cenvat credit to the appellant on the above invoices on the ground that Rule 3 of the Cenvat Credit Rules⁴, 2004 provides for credit of duty of excise, but not the credit of an amount deposited under section 11D. Accordingly, the appellant was called upon to explain why the above credit should not be recovered from it under Rule 14 of the CCR read with section 11A along with interest under section 11AA. Penalty was also proposed to be imposed under Rule 15 (2) of CCR read with section 11AC.

5. The Assistant Commissioner passed order dated 24.11.2015, which was affirmed by the impugned order.

² Act

³ SCN

⁴ CCR

6. This appeal is filed by the appellant on the following grounds :-

- (i) The Commissioner (Appeals) failed to take into account the submissions made by the appellant ;
- (ii) It is incorrect to say that the activities undertaken by their suppliers M/s Bhushan Steels did not amount to manufacture ;
- (iii) The Commissioner (Appeals) has not considered the fact that the appellant received the goods and entered them to its books of accounts ;
- (iv) The Commissioner (Appeals) has failed to take into account its submission that the appellant had maintained records of receipt, disposal, consumption and inventory of duty paid inputs as per Rule 9 (5) of the CCR ;
- (v) if the credit of the duty paid is not given to them, which results in a cascading effect imposing extra duty burden on the consumers ;
- (vi) The demand is time barred and that there is no evidence of the elements required for invoking extended period of limitation ;
- (vii) The penalty was wrongly imposed upon the appellant.

7. Learned Authorized Representative for the Revenue supports the impugned order. He vehemently argued that the CCR provide for credit of duty excise paid and not for credit of any amount paid. He submits that when the activity of M/s Bhushan Steels did not amount to manufacture at all, it was not required to pay any duty of excise. However, it paid an amount as duty of excise and collected the amount from the appellant. Such an amount is only an amount collected by M/s Bhushan Steels representing it as duty of excise, but it is actually not duty

of excise. Such an amount has to be deposited in the exchequer as per section 11D.

8. Learned authorized representative for the Department also submits that regardless of the fact that the invoices showed the amount so paid as duty of excise, it is only an amount paid under section 11D. There is no provision whatsoever in the CCR to allow credit of such an amount. Therefore, Cenvat credit has been correctly denied in the impugned order and its recovery has been correctly ordered and penalty has also been correctly imposed for wrong availment of Cenvat credit.

9. We have considered the submissions in the appeal and the submissions made by learned Authorized Representative for the Revenue.

10. The case of the Revenue is that the activities of M/s Bhushan Steels did not amount to manufacture which was discovered during audit. Therefore, the amount paid as excise was not excise duty, but were only amount collected as representing excise duty and, therefore, they had to be deposited in the Government account under section 11D. Such an amount does not qualify for credit under CCR.

11. We find that the appellant is a buyer of the materials and had paid the amount as duty of excise and not as an amount under section 11D. The goods have been correctly received and accounted for. If the Revenue was of the opinion that M/s

Bhushan Steels had wrongly assessed its duty liability and paid certain amount as duty of excise when in fact the activities did not amount to manufacture at all, the officers who had jurisdiction over M/s Bhushan Steels should have examined this matter while assessing the returns filed by M/s Bhushan Steels and taken appropriate action. The officer who issued the SCN had jurisdiction over the appellant and not over M/s Bhushan Steels. Therefore, in the first place the Jurisdictional Officer cannot decide or determine if the activities of M/s Bhushan Steels amounted to manufacture or not. Therefore, the SCN itself was issued without any authority of law. No doubt, the SCN intends to recover the Cenvat credit availed by the appellant but the basis for such of recovery is the assertion that the activities of M/s Bhushan Steels, Ghaziabad, who had supplied the goods did not amount to manufacture.

12. Deciding the amount of excise duty leviable and deciding whether the activities of an assessee amount to manufacture or otherwise and other related issues are matters of assessment. Such assessment can be done by the assessee itself (self-assessment under Rule 6 of Central Excise Rules, 2002) or by the Scrutinizing Officer who has jurisdiction for the assessee under Rule 12 (3) of the Central Excise Rules. Neither the appellant in this case who is the only the buyer of the goods nor the Assistant Commissioner who has jurisdiction over the appellant had any jurisdiction or right to change the assessment made by M/s

Bhushan Steels. For this reason alone, the entire SCN and the consequent orders need to be set aside.

13. It also needs to be noted that the appellant cannot be expected to conduct an investigation into the activities of each of its suppliers to decide and determine if the processes which it undertook amounted to manufacture and further determine if the amount of duty was actually leviable on such manufacture and thereafter take credit of duty. We find nothing in the CCR, or the Central Excise Rules or the Act which places such an obligation on any assessee who is the buyer of the goods. The SCN and the consequent orders need to be set aside on this ground as well.

14. In view of the above, the appeal is allowed with consequential relief, if any to the appellant.

(Order pronounced in open court on 17/02/2023.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)