IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/56164/2013 [SM]

[Arising out of Orders in Appeal No. 129-CE/BPL/APPEAL/2012 dated 13.12.2012, passed by the Commissioner (Appeals), Central Excise & ST, Bhopal.]

For approval and signature:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

M/s. Rajasthan Explosive & Chemicals Limited ....Appellant

Vs.

CCE & ST, Bhopal ....Respondent

Appearance:

Shri Abhinav Srivastav, Advocate for the Appellants
Shri M.R. Sharma & Shri R.K. Mishra, ARs for the Respondent

CORAM:

Hon'ble Mr. V. Padmanabhan, Member (Technical)

Date of Hearing: 03.01.2017

FINAL ORDER NO. 50073/2017-EX [SM]

Per V. Padmanabhan

The present appeal is directed against OIA dated 13.12.2012 passed by Commissioner (Appeals), Bhopal.

2. The appellant is engaged in the manufacture of bulk explosive falling under chapter heading 36020010 of the Central Excise tariff. They availed the benefit of Cenvat credit for various inputs used in the manufacture of explosives. In the course of audit. The department noticed that the appellant was not in a position to provide

documents for scrutiny on the basis of which certain Cenvat credit were taken, total amounting to Rs. 27,88,893/-. This credit was availed on the basis of two bills of entry Nos. 803076 dated 20.09.2005 as well as 600228 dated 10.01.2006. The appellant imported certain chemicals vide the above bills of entry which were in the name of appellant's head office. Appellant had their factory at Waidhan (M.P.) from where they were manufacturing the explosives for supplying to M/s. Coal India Limited. This product has its shelf life of 48 hours and the appellant needs to supply within that time only. On account of fire accident at the factory in Waidhan, the appellant was not in a position to submit any document related to the import of these goods and use of the same in the factory for manufacturing of explosives. Revenue proceeded to disallow the Cenvat credits by taking a view that the appellant has failed to satisfy the fact that the raw materials imported through bills of entry, filed in the name of head office, have been received and used in the factory. Both the authorities below have disallowed the credit and confirmed the demand and ordered for recovery along with interest and penalty.

3. With the above background heard Shri Abhinav Srivastav, ld. Advocate for the appellant and Shri R.K. Mishra, ld. AR for the Revenue.

4. Ld. Advocate submitted that the necessary documentary proof substantiating the receipt of the imported chemicals and used in the factory at Waidhan could not be submitted on account of fire accident at the factory on 05.07.2009. However, he submits that they have

now obtained necessary documentary proof supporting their claim that the raw materials imported by filing bill of entry in the name of head office for subsequent use in the factory at Waidhan. Accordingly, he prays that the matter may be remanded to the Original Authority for verification of such claims and allowing the Cenvat credit.

5. Ld. AR reiterated the findings in the impugned orders.

6. The case of the appellant is that he could not produce the relevant evidences for receipt of imported raw materials at the factory on account of the documents being destroyed in the fire accident at the factory premises. However, from the copies of documents submitted by the appellant, I find that they are in a position to satisfy the Revenue authorities regarding receipt of such raw materials at the factory. To enable verification of the same, I set-aside the impugned order and remand the matter to the Original Adjudicating Authority. The appellant may be given proper opportunity to submit the documentary proof and the Original Authority is directed to carry out verification and issue de-novo orders.

7. The appeal is disposed of by way of remand.

[Dictated and pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

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