IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing: 9.1.2017

Appeal No. E/354/2007-EX.(SM)

(Arising out of Order-in-Original No. 77-80/2006 dated 31.10.2006 passed by the Commissioner, Central Excise, Jaipur)

M/s Continental Engine Ltd. Appellant

Vs.

CCE, Jaipur-I Respondent

Appearance

Shri Bipin Garg, Advocate - for the appellant

Shri R.K. Mishra, D.R. - for the respondent

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

Final Order No.

Per V. Padmanabhan :

The appellant is a 100% EOU engaged in the manufacture of aluminium automotive components falling under Chapter 84.09 of the schedule to the Central Excise Tariff Act. The impugned order dated 7.11.2006 has confirmed the demand of duty raised under four different show cause notices as per the table below:

S.No.	Show Cause Notice C. No. & date	Duty demanded (in Rs.)	Show cause notice issued by the
1.	V(84)15/Off/134/05/181 dated 5.1.2006	Cus. 27,67,261/-	Commissioner, Central Excise Commissionerate, Jaipur-I
2.	V(84)18/Dem/2006/1824 dated 20.3.2006	Cus. 1,84,900/-	Dy. Commissioner, CE Dn., Bhiwadi

3.	V(84)19/Dem/2006/1822 dated 20.3.2006	CE 83,463/-	Dy. Commissioner, CE Dn., Bhiwadi
4.	V(84)64/DEM/2005/9842 dated 23.11.2005	CE 2,54,241/-	Dy. Commissioner, CE Dn., Bhiwadi

2. As per the condition No. (4) of para 1 of the Notification No. 52/2003-Cus. dated 31.3.2003, the goods taken outside the unit for job work for manufacture of the final product are to be returned to the unit after job work or may be removed without payment of duty under bond for export from the job workers premises. Also the waste or scrap or remnants generated during such processes at the job worker's premises is either returned to the unit or is cleared on payment of duty as if cleared into DTA by the said unit. Further, as per S.No. C27 of the standard input-output norms notified under Duty Exemption Scheme read with provisions of para 6.8 (e) of the Foreign Trade Policy 2004-2009, scrap/waste/remnants to the extent of 6% is admissible for manufacture of Aluminium Castings from Aluminium ingots. The assessee had imported 27,81,129 kgs. of aluminium ingots without payment of duty and sent the same to their job worker, namely M/s Continental Engines Ltd. (Foundry Division), Bhiwadi after obtaining necessary permission from the Deputy Commissioner, Central Excise Division, Bhiwadi under the provisions of Notification No. 52/2003-Cus dated 31.3.2003, as amended, for conversion into aluminium castings on job work basis. The assessee brought back 25,20,042 kgs. of aluminium castings in their factory premises, claiming a total aluminium waste of 2,61,092 Kgs. (recoverable 1,87,558 Kgs. + burning losses 73,534 Kgs.) at the

job worker's premises out of the said quantity of aluminium ingots sent to the job worker for conversion into aluminium castings. Thus, the assessee had claimed 94,224 Kgs. of aluminium waste involving duty Rs.27,67,261/- in excess than that of admissible to them. In view of the foregoing facts, it appeared that the assessee had contravened the provisions of Notification No. 52/2003-Cus. dated 31.3.2003 as amended read with provisions of Foreign Trade Policy 2004-2009 and not paid duty amounting to Rs.27,67,261/- involved in the excess aluminium waste claimed by them during the period from 12.2.2003 to 31.3.2005.

3. With the above background, heard Shri Bipin Garg, ld. Counsel appearing for the appellant as well as Shri R.K. Mishra, ld. DR

4. Ld. Advocate submits that the appellant had imported aluminium ingots as well as procured indigenously and sent the same to job works for converting the same into the aluminium castings. During this process, there has been losses' including wastage generated. The total waste as well as invisible losses were in the range of 9.37% to 9.98% for different periods of time. As per the norms notified by Assistant Development Commissioner for such wastage, up to 6% generation of aluminium scrap is permissible. Since the loss in their case is over and above is norms of 6%,

Revenue has demanded the Customs/Excise duties on the corresponding weight of aluminium ingots procured duty free. He further submitted that there is nothing on record to suggest that the excess exemption of aluminium ingots has been on account of any diversion. He also submitted that in the relevant two show cause notices dated 5.1.2006 as well as 23.11.2005 the department has made a blank assertion of suppression of facts. He submitted that the extended period of time limit will not be invocable in such cases. He also submitted that since the aluminium ingots have been completely utilised in the generation of castings and the full wastage recorded in the books which has also to be verified by the Central Excise officers there should be no demand on the corresponding quantity of ingots procured duty free.

5. Ld. DR, on the other hand, opposed the above contention raised by the ld. Counsel. He supported the order passed by the authorities below and submitted that the duty is liable to be paid on aluminium ingots over and above the norms of 6% circulated by the Development Commissioner.

6. The appellants have made use of aluminium ingots both imported as well as procured indigenously and sent them to job workers for converting the same into aluminium castings which were used in the further manufacture of automobile parts. During

the course of production of automobile parts, aluminium scrap is generated. As per para 6.8 (e) of the Foreign Trade Policy, waste/ scrap arising out of the production process may be sold in DTA as per the SION notified under the exemption scheme. In the present case, the Development Commissioner has notified wastage norm of 6%. But in the case of the appellant the wastage has consistently been beyond the norm of 6% and has been found on verification to be of the order of 9.37% to 9.98% during the period 2003-2004 to 2005-2006. In respect of scrap generated beyond the norms of 6% in the impugned order customs as well as excise duty have been demanded in respect of quantum of ingots proportional to the excess quantum of scrap generated.

7. From the record, I find that no evidence has been brought on record by Revenue to indicate that any part of such aluminium ingots has been diverted. Hence the entire quantum of aluminium ingots procured have, in fact been, utilised for production of final products. However, part of the ingots which has been lost in the form of wastage is more than the norm of 6%. Under the circumstances, the question is whether such excess exemption is to be ignored or whether the duty is to be demanded on the portion of aluminium ingots lost in such excess wastage, I am of the view that the quantum of ingots which has been consumed towards wastage beyond the norm of 6% is to be considered as utilised beyond the scope of the

permission for procurement of duty free inputs. However, since absolutely no evidence of diversion or suppression is on record, I find it difficult to sustain the charge of suppression and invoking the extended time limit for demand of such duty made vide two of the show cause notices dated 5.1.2006 as well as 23.11.2005. In respect of these two show cause notices, the demand is to be restricted to that falling within normal time limit and for this purpose, the case is remanded to the original adjudicating authority. In respect of the two show cause notices dated 20.3.2006, the demands are upheld. All the demands are to be paid along with interest. However, in the absence of any suppression, there is no justification for imposition of penalty and the same are set aside.

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

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