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

Date of Hearing/Order: 9.1.2017

Appeal No. E/930-932/2008-EX.(SM)
E/370/2009

(Arising out of Order-in-Appeal No. 16 to 18 (RKS) CE/JPR-I/2008 dated 25.1.2008 & Order-in-Appeal No. 223(DK) CE/JPR-I/2008 dated 24.11.2008 passed by the Commissioner, Central Excise (Appeals), 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.50358-50361/2017

Per V. Padmanabhan :

The appellant is a 100% EOU engaged in the manufacture and export of automobile parts. For this purpose, they import aluminium ingots and converting them to castings which are further machined into the required automobile parts. During the course of manufacture, certain scrap gets generated which is cleared by the appellant in the Domestic Tariff Area on payment of concessional rate of duty @ 50% under Notification No. 23/2003. Revenue was of the opinion that as per Import Export Policy, the appellants were not entitled to clear the scrap in DTA since the Director General of Foreign Trade has not fixed any input output norms for such scrap. Since the clearances to the DTA is without authorization, Revenue took the view that the benefit of the concessional rate of duty availed by the appellant is needed to be withdrawn. On these lines, demand for differential duty was raised on the appellant for different period of time which stands confirmed against them. In all these cases, when the issue was taken before the Commissioner (Appeals) the appellants did not get any relief. Hence, the present appeals.

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

3. Ld. Counsel submits that though no input output norms for clearance of scrap in details was fixed initially at the time of clearance of the scrap during disputed period, subsequently the DGFT has fixed the SION norms for clearance of scrap. He brought to our notice the letter dated 20.12.2004 issued by the Assistant Development Commissioner of Noida Special Exonomic Zone in which the input output norm has been fixed on the basis of the request made by the appellant vide their letter dated 29.3.2012. He further brought to my notice that for periods subsequent to those covered by the appeals presently under consideration, the Commissioner (Appeals) has considered the SION norms and had set

aside the demand for confirmation of differential duty and remanded the matter to the original authority for de novo decision in the matter. In line, with the above remand order of Commissioner (Appeals), the original authority has since dropped the demand for differential duty in respect of subsequent period. Accordingly, he prays that the period covered by the present appeal may also be decided in their favour.

4. Ld. DR, on the other hand, reiterates the order passed by the lower authority.

5. At the time of clearance of the scrap in DTA the SION norms were not available to the appellants. However, the same has since been fixed by the DGFT vide their letter dated 23.2.2009. The concessional rate of duty @ of 30% envisaged under Notification no. 23/2003 dated 31.3.2003 is available in cases where such scrap has been allowed to be cleared in DTA. The differential duty has been demanded for different periods by Revenue by taking that view that since no norms were available at the time of clearance of the scrap, the same are to be considered as cleared without authorization and hence not entitled to the benefit of the notification. Since the input output norms have since been fixed by the DGFT the benefit of concessional rate for the scrap will be available to the appellants. I consider it necessary to remand the matter to the original

adjudicating authority for verifying the calculation of the quantum of scrap cleared by the appellants during various periods covered under the present appeals. He is directed to extent the benefit of concessional rate of duty in respect of scrap subject to the approved limits of SION fixed by the DGFT. Since the issue is pending for a very long time I direct that this exercise will be completed within a period of two months from the date of receipt of copy of the present order. The appellant may be permitted to submit necessary details for verification and any other relevant evidence may be admitted as per law.

(Dictated & pronounced in open Court)

(V. Padmanabhan)
Member (Technical)

RM