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

Excise Appeal No. E/3144 & 3199/2009-[SM]
[Arising out of Order-In-Appeal No. 38/2009 (C.E.), Commissioner dated: 15.10.2009 passed by CCE Jaipur]

For approval and signature:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

M/s. Waves Aircon (P) Ltd. ...Appellant
Vijay Anand Director

Vs.

C.C.E. Jaipur-I …Respondent

Appearance:
Mr. Bipin Garg, (Advocate) for the Appellant
Mr. RK Mishra, DR for the Respondent

CORAM:
Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing/ Decision. 04.08.2015

Final Order No. 54313-54314 /2015

Per S K Mohanty:

Brief facts of the case are that the appellant is a manufacture of excisable goods and is duly registered with the Central Excise Department. The ground plan indicating the location of the factory of appellant i.e. Plot No. GI-797, Phase-II Industrial Area – Bhiwadi was approved by the Jurisdictional Central Excise Authorities for the purpose of Central Excise Registration. Subsequently, the appellant had purchased the land in plot No. 793-795, which are located adjacent to the factory. The capital goods by the appellant procured during the disputed period were installed in such adjacent place. The cenvat credit taken on those capital goods was denied by the Central Excise Department on the ground that capital goods were installed outside the factory premises. Further, duty demand has also been confirmed against the appellant on the ground that air handling units have been removed clandestinely from the factory without payment of Central Excise duty.

2. Sh. Bipin Garg, the Ld. Advocate appearing for the appellant has referred to paragraph 28 and 29 in the adjudication order wherein, it has been observed by the Adjudicating Authority that once the assesse got amended the registration certificate for inclusion of the premises, subsequently the duty demand on account of cenvat credit cannot be confirmed and also no penalty can be imposed. He submits that since the adjudication order has dropped the duty and penalty amount, the interest liability confirmed is not sustainable. He further submits that no iota of evidence has been brought on record to prove the clandestine removal of goods from the factory. He further submits that mere acceptance of shortage of goods cannot lead to the conclusion of clandestine removal from the factory.

3. Per contra Sh. R K Mishra, the Ld. DR appearing for the Respondent reiterates the findings recorded in the impugned order.

4. Heard the Ld. Counsel for both the sides and perused the records.

5. I find that appreciating the true scope and purport of the cenvat scheme, the Adjudicating Authority in the impugned order has held that taking of cenvat credit prior to amendment of the registration certificate is only a technical violation for which the cenvat credit cannot be denied and penalty cannot be imposed. However, while dropping the proposals made in the SCN, regarding confirmation of Cenvat demand and imposition of penalty, the adjudication order has

confirmed the interest demand I find that it is not appropriate on the part of the adjudicating authority in ordering for payment of interest in terms of Rule 14 of the Cenvat Credit Rules. The said rule has the application only when the cenvat credit has been taken or utilized wrongly. In the present case, there is no whisper in the Adjudication Order that the credit has been taken wrongly by the appellant. In absence of any wrong availment of the cenvat credit, in my opinion, Rule 14 cannot be invoked for confirmation of the interest liability.

6. With regard to the findings that the air handling units have been removed by the appellant clandestinely without payment of Central Excise duty, I find from the adjudication order that Director of the appellant has stated the reason of shortage, which was due to wrong reporting by production incharge inasmuch as more number of pieces of the manufactured goods were entered in the daily stock register as against the actual pieces of air handling units actually manufactured by the appellant. I find that based on the voluntary statement of the Director regarding deposit of duty amount, the Department has concluded that the goods have been removed clandestinely from the factory. It is an admitted fact on record that the Department has not produced any evidence to substantiate the clandestine removal in the present case. No findings have been recorded as to who are the buyer of the clandestinely removed goods, the receipt of consideration towards sale of those clandestinely removed goods etc. In absence of any corroboration to this effect, the alleged duty demand cannot be confirmed.

7. In view of the fact that the Department has not brought on record any iota of evidence of clandestine removal of goods, I am of

the opinion that the charge of clandestine removal cannot be sustained against the appellant. In view of above, the impugned order is set aside and the appeal is allowed in favour of the appellant. The appellant filed by Shri Vijay Anand is also allowed by setting aside the impugned order.

(Dictated and pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Neha