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

Excise Appeal No. E/1384/2011- EX[SM]
[Arising out of Order-In-Appeal No. 151/CE/D-II/2011 dated 24.03.2011 passed by Commissioner Central Excise, New Delhi-II]

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

M/s. Orbit Zippers Pvt. Ltd ...Appellant

Vs.

C.C.E. Delhi …Respondent

Appearance:
Ms. Rinki Arora, (Advocate) for the Appellant
Sh. H.C. Saini, (AR) appeared for the Respondent

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

Date of Hearing/ Decision. 29.11.2016

Final Order No 56456 /2016

Per S K Mohanty:

This appeal is directed against the impugned order dated 24.03.2011 passed by the Commissioner (Appeals), Central Excise, New Delhi.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Zips, Zips Rolls and Zippers, falling under Chapter Heading 9607 of the Central Excise Tariff Act, 1985. An intelligence was received that M/s. Arihanta Metal Co. (AMC) had altered the description of goods i.e. Brass Circles, Brass Strips as "Brass Sheets"

in the invoices issued by it in order to facilitate the appellant to avail inadmissible cenvat credit without actually receiving the goods. On the basis of investigation, show cause proceedings were initiated against M/s. Arihanta Metal Co. and other persons including the appellant herein. The show cause notices were adjudicated vide order dated 28.02.2010, wherein cenvat credit of Rs. 3,05,855/- was disallowed and equal amount of penalty was imposed on the appellant. On appeal, the Ld. Commissioner (Appeals) vide the impugned order date 24.03.2011 has upheld the adjudged demand. Hence, the present appeal is before the Tribunal.

3. The Ld. Advocate appearing for the appellant submits that the appellant had received Brass Sheets under the cover of Central Excise invoices from registered dealer M/s. Arihanta Metal Company and upon receipt of the duty paid goods, the cenvat credit was availed by it. In this context, she also refers to the statement dated 04.11.2008 of Shri Anil Sood, the Director of the appellant company wherein, it has been stated that the goods supplied by the said registered dealer were received in the factory of the appellant and were used in the manufacture of finished product. Further, the ld. Advocate submits that proceedings initiated against Arihanta Metal Co. and the buyers of the goods were settled by the Tribunal vide

Final Order No. A/51219-51376/2015-SM (BR) dated 20.04.2015.

4. On the other hand, the ld. DR appearing for the respondent reiterates the findings recorded in the impugned order.

5. Heard both sides and perused the records.

6. The ld. Commissioner (Appeals) has proceeded against the appellant on the ground that M/s. AMC had altered the description of goods from Brass Circles and Brass Strips to Brass Sheets on its invoices and thus, had passed on inadmissible cenvat credit to the appellant. I find from the available records that no proper investigation was conducted in the factory of the appellant to ascertain whether the disputed goods were received and utilized for the intended purpose. Rather, the statement recorded from the Director of the appellant company revels that the goods namely, Brass Sheets received under the cover of invoices were used/ utilized for manufacture of the final product. No where in this statement, it has been mentioned that the appellant had not received Brass Sheets under the cover of Central Excise invoices from the register dealers M/s. AMC. Thus, in absence of any specific investigation to show non-receipt of goods by the appellant, cenvat demand confirmed against the appellant

cannot be sustained. Further, I find that the demand confirmed against other manufacturers/ buyers have already been set aside by the Tribunal vide Final Order No. A/51219-51376/2015-SM (BR) dated 20.04.2015, holding that there is no corroborative evidences that the manufacturer/ buyers have received the invoices only but not the goods covered under the said invoices.

7. In view of above, I do not find any merits in the impugned order. Accordingly, the same is set aside and appeal is allowed in favor of the appellant.

(Operative Portion pronounced in open court)

(S. K. Mohanty)
Member(Judicial)

Sakshi