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

Excise Appeal No. E/56064-56065/2013-[DB]
[Arising out of Order-In-Original No. 120/COMMR/IND/CEX/2012 dated 23.11.2012 passed by CCE Indore]

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

M/s. V E Commcercial Vehicles Ltd. ...Appellant
Eicher Engineering Components Ltd.

Vs.

C.C.E. & S.T. Indore …Respondent

Appearance:
Mr. Nand Kishor & Anshul Verma (Advocates) for the Appellant
Mr. H.C. Saini, DR for the Respondent

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

Date of Hearing/Decision.02.05.2017

Final Order No. 53153-53154/2017

Per B. Ravichadran:

These two appeals are against order dated 30.11.2012 of CCE Indore. The main appellant M/s V E Commercial Vehicles Ltd. are engaged in the manufacture of light commercial motor vehicles chassis and were discharging Central Excise duty on such goods. They were also availing cenvat credit on inputs, capital goods and input services in terms of Cenvat Credit Rules, 2004. The dispute in the present appeals relates to the credit availed by the main appellant on machined/ finished forgings received from the job workers. The main appellant procure duty paid rough forgings which are inputs for their final products. They availed credit on the same. They have sent these rough forgings to the job workers for machining and further process to get intermediate product to be used by them in the manufacture of final product. The clearance of rough forgings to the job worker and receipt back is in terms of Rule 4(5)(a) of Cenvat Credit Rules, 2004. The job worker pays central excise duty on the finished intermediate products, namely machined forgings by adopting the value which is equivalent to cost of rough forging plus processing charges. On receipt of such duty paid intermediate products, the main appellant availed the credit of such duty. The Revenue objected to such credit on the ground that the appellants attempting to take double benefits on the inputs which is not permitted by the law. The Revenue contended that the job worker should have followed the provisions of either Rule 16A of Central Excise Rules, 2002 or Notification No. 214 of 86-CE, for such manufacture and clearance of intermediate goods. Proceedings were initiated against the main appellant as well as the second appellant, who is a job worker in this case, to demand and recover cenvat credit of Rs. 56,66,702 and also to impose penalties under various provisions of the Act under the Rules. Upon adjudication of the case original authority disallowed the said credit and imposed equal amount of penalty on the main appellant and a penalty of Rs. 5,50,000/- on the second appellant (job worker) under Rule 24 of the Central Excise Rules 2002 for failure to follow the correct procedure in terms of Notification 214 of 1986 dated 25.03.1986.

2. The Ld. Counsel for the appellants submitted that they have cleared the rough forgings after availing credit, to the job worker for

further processing and return. They correctly followed the procedure in terms of Rule 4(5)(a) of Cenvat Credit Rules, 2004. The job worker did not avail any exemption for the manufacturing process undertaken by them. There is no mandate for the job worker to follow the procedure under Notification 214 of 1986. The job worker paid the full duty on the intermediate goods and cleared the same under proper receipt to the main appellant, thereafter they have availed credit of such duty. Admittedly duty has been discharged by the main appellant at the time of procurement of machined forgings. The credits on such payments cannot be denied to the appellants. He further relied on the decision of the Tribunal in Bharat Heavy Electricals Ltd. 2014 (300) ELT 442 (Tri. Del.) wherein identical set of facts were examined. The Tribunal held that credit taken by the manufacturers cannot be denied and non-availment of Notification 214 of 1986-CE by the job worker cannot be the reason for any denial of credit. The said decision has been followed by various other subsequent decisions of the Tribunal.

3. The Ld. AR reiterated the findings of the original authority. He submitted there were references to the proceedings before the lower authorities regarding non-fulfillment of certain conditions under Rule 4(5)(a) of the Cenvat Credit Rules, 2004 by the appellant.

4. We have heard both the sides and perused the appeal records.

5. The proceedings against the appellants are for denying the credit of duty paid on finished forgings received by them from the job worker on payment of duty. We note that the main ground of denial is there is a double benefit to the appellant. One is at the rough forgings stage and second at the stage of machined forgings.

Further Revenue felt that the job worker should have followed the procedure under Notification 214 of 86-CE and availed exemption. We find both the reasons are not sustainable. Admittedly, the appellants paid central excise duty, both at the stage of procuring rough forgings and also at the time of receiving back the machined forgings from the job worker. When the duty has been paid the entitlement for credit follows. Further, we also note, notification 214 of 86-CE is a conditional Notification. The same cannot be compelled to be followed by the job worker.

6. We note that the Tribunal had occasion to examine similar set of facts on earlier occasions in Bharat Heavy Electrical Ltd. (supra). The Tribunal held as below.

> "*The Department seeks to deny the Cenvat credit of the duty on the intermediate product paid by the job workers on the ground that on the same inputs, Cenvat credit cannot be availed twice - first at the time of receipt the inputs by the Appellant in their factory from the input manufacturers and second time in respect of duty paid on intermediates goods made out of input supplied by Appellant upon receiving the same from the job workers. Logically, the ground on which the Cenvat credit is sought to be denied is totally incorrect. There is no condition in Rule 4(5)(a) of the Cenvat Credit Rules, 2004 that job worker should necessarily avail of full duty Exemption under Notification No. 214/86-C.E. This exemption being a conditional exemption, is not required to be compulsorily availed by job workers. If the job worker decides to pay the duty on the intermediate products manufactured by him on job-work basis for the principal manufacturer, in terms of the judgment of the Apex Court in case of Ujagar Prints v. Union of India, reported in 1989 (39) E.L.T. 493 (S.C.), they would be required to pay duty on the cost of input plus job charges including the cost of their own inputs used in manufacture. This is what the job workers have done in the present case. Moreover when the inputs, in question, have suffered twice, first in the hand of input manufacturers from whom the Appellant had procured the inputs and second time in the hand of job workers who at the time of clearance of intermediate products made out of the inputs paid duty on value which included the cost of the inputs, the credit of the duty paid on the intermediate product cannot be denied when such intermediate were made out of those inputs, even if the Appellant had earlier taken the Cenvat credit in respect of inputs while receiving the same. In any case, the intermediate products made out of inputs are different from inputs and just because the Appellant have availed Cenvat credit in respect of the inputs, the Cenvat credit of duty, if any paid on the intermediate products by the job workers, cannot be denied to the principal manufactures*."

7. The above said ratio has been followed by the Tribunal in Surabhi Chemicals 2017 (346) ELT 458 (Tri. Amd.) and Thermax Ltd. 2015 (326) ELT 369 (Tri. Amd).

8. In view of the discussion and analysis above, we find that the impugned order cannot be legally sustainable. Accordingly, the same is set aside. The appeals are allowed.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member(Technical)

(S. K. Mohanty)
Member (Judicial)

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