CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-IV

Date of hearing/Decision: 17.05.2017

Appeal No. E/248/2009- EX

[Arising out of the Order-in-Appeal No. 191-CE/MRT-I/2008 dated 31.10.2008, passed by the Commissioner (Appeals), Central Excise, Meerut (U.P.)]

M/s ACE Glass Containers Ltd. … Appellant

Vs.

Commissioner, Central Excise, Meerut-I … Respondent

Appearance:

Present Shri Ms Rinki Arora, Advocate for the appellant
Present Shri,K. Poddar, Advocate for the respondent

Coram: Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No:_____5337/2017___

Per B.Ravichandran

1. The appeal is against order dated 18/11/2008 of Commissioner (Appeals), Meerut-I. The applicants are engaged in the manufacture of empty glass bottles for aerated water. These bottles manufactured by the appellant were sent to the job worker for printing, in terms of the provisions of Rule 4 (5) (a) of Cenvat Credit Rules, 2004 read with notification Number 214/86 CE. In some cases, when the job work of printing could not be completed within the stipulated period of 180 days and the goods were retained at the job worker's premises beyond 180 days, the appellants paid the applicable central excise duty on the unprinted empty bottles cleared by them. Later, when the job work was completed the printed bottles were subsequently cleared from the job worker's premises on payment of applicable duty. The present appeal is with reference to refund claim by the appellant in respect of Central

Excise duty paid on the unprinted empty bottles cleared by them, which again suffered duty after printing and clearance from the job worker's premises, though beyond a period of 180 days. The appellants claimed that since the full duty liability on the printed bottles were discharged by them, the duty paid on unprinted bottles (because of delay in clearance of printed bottle) should be refunded to them. The lower Authorities rejected the claim on the ground that **"sufficient and compelling evidence"** in support of the claim has not been submitted by the appellant.

2. The Ld. Counsel for the appellant submitted that they have all supporting evidence to establish that the Central Excise duty of Rs. 9,49,914/- paid on a total quantity of Rs. 18,94,440 unprinted empty bottles is eligible as refund. The said quantity of unprinted bottles sent to the job worker were later cleared after printing, on payment of central excise duty on the full value. The said duty of Rs. 14.91.306/- is paid on the bottles on which central excise duty has been already paid due to delay in clearance of printed bottles from the job worker's premises. The ld. Counsel submitted that the lower authorities did not examine the evidences submitted by them and also made presumption that the duty of Rs. 14,91,306/- could be on the value addition by the job worker and may not be on the whole value of the printed bottle. For this, the Ld. Counsel submitted that they have produced all the sale invoices of the printed bottles which will clearly indicate the value and duty paid on them. The refund has been rejected without due examination.

3. The Ld. AR submitted that the appellants did not produce all supporting evidences before the lower Authorities and as such, the claim was rejected on this ground.

4. I have heard both the sides and perused the appeal records. Admittedly, the appellants were availing the services of job worker for printing the bottles. At the time of clearance of unprinted bottles, the appellants need not pay central excise duty as the duty applicable is to be paid by them on printed empty bottles sold and cleared from the premises of the job worker, by the appellant. The invoices for such clearances are issued and duty liability paid by appellants only. The payment of central excise duty because of delay in finishing the printing work at the job worker's premises is not disputed. It is also not disputed that the appellants again paid central excise duty on the printed bottles cleared form the job worker's premises under the cover of appellant's invoice to the buyers. As such, the only thing which has to be verified with the documents is whether the goods which suffered duty as unprinted bottles have discharged duty again as printed bottles after completion of job work.

5. I find the appellants have submitted various documentary evidences like chart of various varieties of empty bottles cleared from their premises and thereafter cleared from job worker's premises, duty payment on unprinted bottles and duty payment on printed bottles when cleared form job worker's premises etc. It is apparent that the lower Authorities did not examine these documentary evidences for a

clear finding. As such, the impugned order is not sustainable and accordingly, set aside.

6. The case is remanded back to the Original Authority for a decision afresh to quantify the amount of refund eligible to appellant based on the documentary evidences submitted by them. The appellant shall be given an opportunity to be heard before a final decision is taken. The appeal is allowed by remand.

[Order dictated and Pronounced in the open court]

B.Ravichandran
Member (Technical)

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