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

Excise Appeal No. 3335 -3336 of 2010 SM

[Arising out of Order-In-Appeal No. 50 349-350/2010 dated 27.7.2010 passed by Commissioner of Central Excise(Appeals), Jaipur I]

M/s. J D Industries (I) Ltd. **Appellants**
Shri J D Gupta, MD

Vs.

Commissioner of Central Excise, **Respondent**
Jaipur

Appearance:

Shri J P Kaushik, Advocate for the Appellants
Shri G R Singh, DR for the Respondent

CORAM:

Hon'ble Mr. V Padmanabhan, Member (Technical)

Date of Hearing / Decision: 26.05.2017

FINAL ORDER NO . 53594-53595 /2017 SM

Per V Padmanabhan:

These two appeals are filed against the order in appeal No. 349-350/2010 dated 27.7.2010. The appellant is a manufacturer of steel tubes falling under Chapter 73 of the Central Excise Tariff. The appellants have been availing inputs credit on HR coils/ skelps etc. purchased from Jaipur and Bharatpur depots of SAIL since the appellants have facilitated to cut coils / skelps, the HR coils procured from SAIL depots. Instead of bringing the coils to their factory, the same in some cases were taken to the premises of the cutters located at Jaipur, but cenvat credit was availed on the basis of invoices issued by SAIL. The DGCEI carried out investigation into the allegation that the appellant was taking the cenvat credit on the basis of invoices issued by SAIL for HR coils but were diverting such coils without bringing them into the factory at Jaipur. Show Cause Notice was issued by DGCEI proposing to deny cenvat credit amounting to Rs.45,08,844/- for the period 2005-06 and 2006-07 upto August 2006. It is the appellant's case that after cutting the coils, the same were brought to the appellants factory for further use in the manufacture of final product. However, they also agreed that in a few cases after cutting of HR coils, the same has been sold directly from Jaipur. However, they submitted that for clearance of inputs as such, after cutting at Jaipur, invoices have been issued from the appellants factory and Central Excise duty has been paid. During the course of adjudication of the show cause notice, they submitted copies of 45 invoices in which total Central Excise duty of about Rs. 30 lakhs has already been paid. However, the department has taken cognizance of only one such invoice No. 249 dated 25.08.2006. The adjudicating authority declined to take cognizance of other sales declined to take cognizance of the other sales invoices which were not relatable to the present matter. Aggrieved by the impugned order, the present appeal has been filed.

2. With the above background, we heard Shri J P Kaushik, learned Advocate for the appellants and Shri G R Singh, learned DR representing the Revenue.

3. During the course of arguments, the learned Advocate reiterated his plea that the appellant has issued 45 invoices for clearance of inputs as such in which Central Excise duty has already been paid. This amount of nearly Rs. 30 lakh already stands reversed through these invoices. However, he fairly agrees that the appellant is not in a position to produce any documentary evidence for receipt of the cut HR coils from the premises of cutters in Jaipur. He further, submitted copy of Chartered Accountant's certificate issued by Shri Rahul Girdhar, CA certifying the period covered by present proceedings. He has certified the total quantum of material procured, raw material consumed in the manufacture as well as quantity of inputs cleared as such. Learned Advocate further argued that since the CA certificate establishes the appellants claim that inputs have been cleared as such, on payment of duty, he prayed that case may be remanded to the adjudicating authority fore reevaluating the total demand after taking into account the duty which is already paid vide

the invoices already submitted by the appellants for clearance of goods as such.

4. Learned DR appearing for the Revenue draws our attention to the findings of the lower authorities wherein the appellants submissions regarding sale of inputs as such on reversal of credit does not stand accepted on the ground that documentary evidence reflecting the same has not been produced by the appellant before investigation by adjudicating authority. Accordingly, he prays that impugned order may be upheld.

5. The allegations made against the appellant is that inputs HR Coils were procured by them and sent directly to the cutters in Jaipur but the Cenvat credit was availed for such inputs. Further, on the basis of investigation carried out at the end of transporters, Revenue has assumed that inputs have been diverted at Jaipur without receipt of the same at the appellants factory. Even though specific evidence are not forthcoming from the records evidencing receipt of the cut HR coils in the appellants factory, the appellant has submitted that they have issued 45 invoices for clearance of the inputs as such and have also paid the Excise duty leviable thereof. From the Chartered Accountants' certificate submitted by the appellants, it emerges that out of total raw material procured during the disputed period, the significant part has been consumed in the production of final product.

It is further evident that books of accounts indicated sale of inputs as such. The duty payment on 45 invoices used by the appellant evidencing clearance of the inputs is not disputed. As such, I am of the view that the total demand raised in the show cause notice and upheld by the lower authorities need to be reduced to the extent of duty already paid for inputs cleared as such. For this purpose, I set aside the impugned order and remand the matter to the original adjudicating authority for considering the plea of the appellant for such reduction of the duty demand. The appellant is free to submit evidence in their possession to substantiate their claim. The adjudicating authority will pass the order in de novo proceedings after giving opportunity of hearing to the appellant.

6. a The appeals are disposed of as above by way of remand.

(pronounced in the open court)

(V. Padmanabhan)
Member(Technical)

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