CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 30.05.2017

Appeal No. E/2537/2011-EX[SM]
[Arising out of the Order-in-Appeal No. 117/RPR-I/2011 dated 25/07/2011, passed by the Commissioner (Appeals-I), Central Excise, Customs & Raipur

Refracast Metallurgical (P) Ltd Unit II …Appellant

Vs.

CCE, Raipur … Respondent

Appearance:

Present Shri Surabhi Sinha, Advocate for the appellant
Present Shri G.R.Singh, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53635/2017

Per Ashok K. Arya :

1. The appellant, Refracast Metallurgical Pvt. Ltd is in appeal against Order in Appeal No. 117/2011 dated 25/07/2011 whereunder inter alia input service credit for the service of outward transportation has been, disallowed.

2. The brief facts are that:

i. The appellant manufactures Synthetic Slag falling under Chapter 26, Fero Nickel, Copper Nickel etc. falling under

Chapter 72 and Molly Oxide Briquette falling under Chapter 26 of Central Excise Tariff.

ii. The appellant avails Cenvat credit on Service Tax paid on input services. During the period of February, 2009 to December, 2009, the appellant availed Cenvat credit of Rs. 28,347 against Service Tax paid on 'outward transportation charges.'

iii. Revenue issued a Show Cause Notice (SCN) 19/2/10 to the appellant proposing denial of said Cenvat credit to the appellant on the ground that subject input service as defined under Cenvat Credit Rules, 2004 is not eligible for claiming Cenvat credit. The Revenue's stand is that the appellant wrongly availed Cenvat credit on service tax paid on transportation charges paid for transportation of goods beyond the place of removal i.e. factory gate.

iv. The Order in Original disallowed Cenvat credit as proposed in the showcase notice. The Order in Appeal confirmed the disallowance of said Cenvat credit. Therefore, the appellant is in appeal against the impugned Order in Appeal.

3. After having carefully considered the facts of the case and submissions of the Ld. Counsels, Miss Surabhi Sinha for the appellant and Shri G.R. Singh for the Revenue, it appears that the fact 'whether the appellant assesse sold the goods on FOR basis i.e. sold the goods up to the door of the customer and charged the freight on outward transportation up to the door of customer' is in dispute. It is in dispute that whether element of outward freight was included in the assessable value and whether the duty was paid on the component of outward freight.

The Revenue's contention is that goods were not sold on FOR basis and outward freight has not been included in the assessable value. But the appellant contends that they have the documents to prove that outward freight charges were included in the assessable value and duty of Central Excise was paid on the outward fright accordingly. If it is so, the appellant would be entitled to claim Cenvat credit on the input service of outward freight charges. This fact, if duty was paid on outward freight (charges for outward transportation), needs verification at the level of Original Adjudicating Authority.

3.1 Consequently, the impugned order is set aside and the matter is remanded to the Original Adjudicating Authority for deciding the matter afresh in the light of discussion made above and after giving necessary opportunity of personal hearing and submission of documents to the appellant.

4. In the result, the appeal is allowed by way of remand in above terms.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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