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

COURT-II

Date of hearing/decision:02.06.2017

Appeal No. E/1891/2008-SM
[Arising out of the Order-in-Appeal No. 134(RKS)CE/JPR-I/2008 dated06/06/2008, passed by the Commissioner (Appeals), Central Excise, Jaipur

M/s Pragjyoti Syntex Ltd. …Appellant

Vs.

CCE Jaipur-I … Respondent

Appearance:

Present Ms,Rinki Arora, 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. 5311/2017

Per Ashok K. Arya :

1. The appellant, *M/s PragJyoti Syntex* is in appeal against Order in Appeal No. 134/2008 dated 06.06.2008 whereunder recovery of Cenvat credit of Rs. 1,66,892/- along with interest, and penalty of Rs. 50,000/- against the appellant have been confirmed.

2. The brief facts are that:

i. The appellant is engaged in the manufacture of TV sets falling under Chapter 85 of Central Excise Tariff.

ii. The appellant is doing job work for principal manufacturer, *M/S MIRC Electronics.*

iii. On receipt of input goods from M/*s MIRC Electronics* (along with duty paid documents), the appellant took the Cenvat credit.

iv. It was informed to the appellant by the principal manufacturer M/S MIRC Electronics that there was some technical problem in software because of which newly introduced 4 per cent SAD (Special Additional Duty) was not recognized. Therefore, for the input goods (parts) cleared to the appellant (by M/S MIRC), 4 per cent CAD was not being paid, though the CVD was paid.

v. Later on realization of technical problem in the software, principal manufacturer, *M/s MIRC Electronics* took remedial measures and paid the total amount of SAD.

vi. After the payment of SAD, the principal manufacturer, M/S MIRC Electronics issued supplementary invoices to the appellant on which appellant took the credit.

vii. It has been pointed out by the Revenue that SAD was paid by the principal manufacturer only after the visit of the departmental officers on 07.11.2006.

viii. The Revenue's allegation is that *M/S MIRC Electronics* deliberately did not pay SAD and the appellant contravened the provisions of Rule 9 (1) (b) of Cenvat Credit Rules, 2004.The appellant, therefore, was issued show cause notice which was adjudicated originally by Assistant Commissioner vide Order in Original No. 323 dated 22.01.2008 confirming the recovery of Cenvat credit of Rs. 1,66,892/-.

ix. The appellant went in appeal before Commissioner (Appeals) who sustained the Order in Original passed by Assistant Commissioner.

x. Now the appellant is in appeal before the Tribunal.

3. Both sides represented by Ld. Counsels, Ms. Rinki Arora for the appellant and Shri G.R. Singh for the Revenue, have been heard.

4. During the hearing, the Ld. Advocate submitted that the Tribunal for the same facts in the case *of M/s MIRC Electronics & others Vs Commissioner Of Central Excise, Thane-I*, *2015-TOIL-636-CESTAT-MUM* held that there is no intention to evade duty on the part of principal manufacturer, *M/S MIRC Electronics,* when the appropriate duty liability has been discharged by then. The appellant took the Cenvat credit only after due payment of SAD by M/s MIRC Electronics. Thus there was no case against the appellant. In above decision the Tribunal has inter alia observed as under:

> 9. We find that the show-cause notice invokes the provisions of Rule 14 of Cenvat Credit Rules, 2004 read with first proviso to Section 11A of Central Excise Act, 1944 for invoking the extended period for demanding the amount which is equivalent to an amount of SAD on the parts and components cleared to the co-makers. It is noted from the records the appellants were aware of the computer software glitch which did not indicate the reversal of SAD paid on the parts, components and accessories when they were cleared from the factory premises to their co-makers. The argument put forth by the learned Counsel is that there was no intention to evade duty merits acceptance as appellant has discharged CVD/Central Excise duty on the parts, components and accessories cleared to the co-makers; non-reversal of SAD in our view cannot be with intention to evade duty on such components, in the facts and circumstances of this case, as the appellant had discharged the appropriate duty liability of CVD/Central Excise duty; the argument put forth by the learned A.R> that when the appellants were aware of the software problem in May, 2006 they should have approached the department, will not carry the case any further, as it is on record that main appellant was trying to resolve the glitch of the computer software programme. In these facts, it cannot

be held that there was suppression of facts with intention to evade non-payment of SAD.

9.1. ………

9.2. In yet another case of Cosmo Films Ltd. (supra), the same issue of non-discharge of 4% of CVD was in dispute. The assessee in that case has pleaded that the mistake was bonafide and credit was available to the sister unit hence the issue is of revenue neutral situation. The Tribunal accepting the bonafide plea as also revenue neutral situation, set aside the penalties imposed on the appellant therein. In the case in hand, identical issue is argued regarding the revenue neutral situation which we find has strong force. Since there is revenue neutral situation, there cannot be any intention to evade duty and more specifically when the appellant has discharged CVD/Central Excise duty on parts, components and accessories on clearance.

5. In the light of above discussions the impugned order is set aside and appeal allowed.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)

Member (Technical)

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