CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

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

COURT-I

Date of hearing: 04.09.2017
Date of Pronouncement: 12.09.2017

Appeal No. C/50145/2017-CU[DB]

[Arising out of the Order-in-Original No. ALW/EXCUS/OIO/Com/52/16-17 dated 14.10.2016, passed by the Commissioner of Central Excise, Alwar]

M /s. KEI Industries Ltd. … Appellant

Vs.

C.C.E. & S.T. Alwar ... Respondent

Appearance:

Present Shri Bipin Garg, Advocate for the appellant
Present Shri Govind Dixit, DR for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 56496/2017

Per Justice (Dr.) Satish Chandra:

The present appeal has been filed against the order in Original No. 52/16-17 dated 14.10.2016.

2. The brief facts of the case are that the appellant is a 100% EOU. The appellant during the period under consideration, was engaged in the manufacture of electric conductors and stranded wire of copper falling under Chapter 85 of the First Schedule of the Central Excise Tariff Act, 1985 out of the imported raw materials namely XPLE compound, copper tap, water blocking

tap, stranded wire of copper, polyethylene, HDPE & PE Liner etc. which procured duty free notification no. 52/2003-Cus dated 31.03.2003 read with Foreign Trade Policy 2009 to 2014 (FTP) as per the procedure laid down under the scheme for the EOUs. For unforeseen reason the appellant has exported less quantity and for the remaining quantity the appellant has applied for the certificate to dispose of the raw material in DTA (Domestic Tariff Area) with approval of the Customs authorities on the payment of the applicable duties and submission of import authorization. It is the allegation of the Department that on the quantity of the raw material which was cleared in the DTA, the assessee has not paid applicable customs / central excise duties. So the duty demand was raised along with interest and penalty. Being aggrieved, the appellant has filed the present appeal.

3. With this background, we have heard Shri Bipin Garg, Advocate for the appellant and Shri Govind Dixit, DR for the respondent.

4. The Ld. Advocate submits that the appellant has applied to the customs authorities and obtained a certificate for the sale of the raw material in DTA. Excise duty was fully paid on these items. So it is the submission of the ld. Counsel that they cleared and disposed of the unutilized surplus imported and indigenous raw material on payment of appropriate excise duty to its own concern in DTA after permission of the JAC vide letter dated 25.10.2010 and 22.11.2010 and in both the letters of permission no higher ceiling of quantity / value has been mentioned.

5. On specific query from the Bench, he admits that the raw material in excess of permitted quantity was cleared. But was much in higher quantity. He submits that on the higher quantity duty was paid, so there was no question of paying any more duty. He relied on the following case laws to support his submission:

i) CCE Vs. Royal Enterprises 2016 (337) ELT 482 (SC)

ii) CCE Vs. Chemphar Drugs & Liniments 1989 (40) ELT 276 (SC)

iii) Continental Foundation Jt. Venture Vs. CCE 2007 (216) ELT 177 (SC).

iv) Uniworth Textile Ltd. Vs. CCE 2013 (288) ELT 161 (SC).

6. On the other hand, Shri Govind Dixit, Ld. DR has justified the impugned order. He submits that on the surplus raw material, no duty was paid. In fact, no quantity or value of the raw material has been mentioned in the permission letters dated 25.10.2010 and 22.11.2010, although the permission letters were issued by the JAC in respect to the assessee's request dated 11.10.2010 and 28.10.2010 respectively. No higher limit or ceiling for clearance of the unutilized surplus has been mentioned by the appellant. Lastly, he justified the impugned order.

7. Heard both the parties and perused the record.

8. After hearing both the sides, and on perusal of the record, it appears that the appellant has claimed that the maximum

quantity or value of the raw material has not been mentioned in the permission letter. From enquiry, it appears it is not clear as to how much raw material was utilized for the export of goods and how much remained with the appellant. Further, it is also not clear as to for how much amount permission was granted by the appropriate authority for disposal of surplus raw material and whether duty was paid at the time of clearance of such raw material as claimed by appellant. During the course of the arguments, both the parties have agreed that it is not mentioned in the enquiry how much additional raw material, upon the permission, was sold by the appellant.

9. When it is so, then the fresh adjudication is required by the adjudicating authority. Hence, we set aside the impugned order and remand the matter back to the adjudicating authority to decide the issue denovo and by providing reasonable opportunity to the appellant.

10. In the result, appeal filed by the appellant is allowed by way of remand.

[Pronounced in the open court on 12.09.2017]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu