(In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No. No.E/51164/2014
(Arising out of Order-in-Original No.47/Commr/CEX/ADJ/BPL-I/2013 dated 21.11.2013 passed by Commissioner of Customs ,CE & ST, Bhopal)

M/s S.S. Crop Care Ltd …Appellant

Vs

CCE Bhopal …Respondent

Appearance:
Present for the Appellant : Shri SV Apte, Advocate
Present for the Respondent : Shri HC Saini, DR

Coram:
HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR V.PADMANABHAN, MEMBER (TECHNICAL)

Date of hearing: 08.08.2017
Date of decision: 13.09.2017

Final Order No.

Per V.Padmanabhan,

The appeal is against Order-in-Original No.4713 dated 20.11.2013. The appellant is engaged in the manufacture of pesticides etc falling under Chapter Heading 38.08 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant has two units in Bhopal-Unit-I and Unit-II. The present dispute has arisen in Unit-II, in connection with Cenvat credit availed by them on the basis of an invoice issued by Unit-I for transfer of certain imported raw material on which countervailing duty was paid. Unit No.I imported a particular type of raw material and cleared the same on payment of countervailing duty to the extent of about Rs.75 lakhs. On receipt of the goods in their Unit-I, after making entries in the statutory records, the material was sent to their Unit-II in the month of May, 2011, who used the same in the manufacture of their final product which was cleared on payment of duty back to Unit-I. As the Unit-I had not received the Bill of Entry by the time of transfer of inputs to Unit-II, they did not transfer the Cenvat credit. The same was subsequently transferred in the month of June, 2011, after the receipt of Bill of entry, by issuing the invoice, on the basis of which Unit-II took the credit.

2. During the course of audit of Unit-II, it was noticed that during the month of June,2011, there was NIL production shown as seen from ER-6 returns. Hence, the department proceeded to disallow Cenvat credit amounting to Rs.75,10,634/- along with interest and penalty of equal amount. Aggrieved by the impugned order, the present appeal has been filed.

3. With the above background, we heard Shri SV Apte, Advocate for the appellant and Sh HC Saini, DR for the respondent. It has been submitted on behalf of the appellant that the bill of entry filed in JNPT Custom House for clearance of raw material by Unit-I was not issued to the appellant in April, 2011 even though the goods were released and transported to Bhopal on 04.05.2011. He claimed that the goods were transferred to Unit-II immediately thereafter on

09.05.2011 and subsequently in May, 2011 itself, the raw materials were used to manufacture finished goods at Unit-II and subsequently cleared on payment of duty to Unit-I. Since the entire activity in Unit-II happened in May, 2011 itself, no manufacture was reflected in ER-6 return for June,2011. However, after receipt of bill of entry from customs by Unit-I, credit was taken on 28.06.2011 and subsequently transferred to Unit-II through invoice. Accordingly, credit was taken by Unit-II in June, 2011. Finally, he also submitted that for delayed transfer of credit from Unit-I to Unit-II through invoice number after receipt of raw material by Unit-II, interest has been charged by the department which stands paid also. Accordingly, he submitted that the demand for recovery of Cenvat credit is not justified.

4. The ld DR justified the impugned order.

5. From the narration of facts and perusal of record of the case, we note that the main reason for seeking reversal of Cenvat credit in Unit-II is that the credit has been availed in June, 2011 and in the same month, no manufacture has been reflected. The stand taken by the appellant is that the goods were received by Unit-II in May, 2011 itself used in the manufacture and final products which also stands cleared on payment of duty in May itself. However, the credit was taken in June, 2011 when such credit was transferred through invoice from Unit-I after receipt of bill of entry by them.

6. After perusing the record of the case, we note that there is no dispute about the fact that the imported goods have suffered payment of CVD and the same has been received in Unit-I and subsequently transferred to Unit-II. The invoice transferring such credit to Unit-II is not being disputed for its authenticity. The explanation offered by the appellant for not reflection of any production in the month of June is also plaussible and acceptable. The appellant has also paid the interest liability amounting to Rs.1,47,000/- for delayed issuance of invoice.

In support of their claim that the raw materials were received in the Unit-II in May itself and use of the said raw material in manufacture in its final product and clearance thereof in May itself, they have submitted the documentary evidence. These documents support the claim of the appellant. After perusal of these documents, we are of the view that a substantial benefit of Cenvat credit available to Unit-II cannot be denied for the procedural delays in issue of invoice and debiting the duty at Unit-I. It is also seen for delayed payment of duty at Unit-I interest has already been paid.

7. In view of above, we find no justification in the order for reversal of Cenvat credit. Impugned order is set–aside and appeal allowed.

(Pronounced in Court on 13.09.2017)

(Justice (Dr) Satish Chandra) President	(V.Padmanabhan) Member (Technical)

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