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

Excise Appeal No. 52651, 52687 of 2015

[Arising out of Order-in-Original No. 100-14-15 dated 31.03.2015 passed by the Commissioner of Central Excise, Jaipur]

M/s. National Engineering Indus. Ltd. **Appellant**

Vs.

Commissioner of Central Excise Jaipur **Respondent,**

AND

Commissioner of Central Excise Jaipur **Appellant**

Vs.

M/s. National Engineering Indus. Ltd. **Respondent,**

Appearance:

Shri Hemant Bajaj, Advocate for the Appellants
Shri H C Saini, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 04.10.2017

FINAL ORDER NO.56959-56960 /2017

Per: Justice (Dr.) Satish Chandra:

The present appeal is filed against Order-in-Original No. 100-14-15 dated 31.03.2015. Period of dispute is 2008-2013.

2. The brief facts of the case are that the assessee as well as the Revenue are in appeal against the impugned order of Commissioner. The assessee is a manufacturer of Ball Bearings and Axle Boxes liable to Central Excise duty. Assessee are availing cenvat credit of inputs and capital goods. They manufactured wide varieties of Ball Bearings and claimed to deal with 1,40,000 different types of raw materials, work-in-progress goods, finished goods, stores and supplies taken together. The Assessee conducted audit of their inventory of all items namely inputs in stock, goods-in-process, and finished stock. During the course of such verification, they found certain shortages and certain excesses in respect of various inputs as well as finished goods.

3. Based on the report of the assessee's auditors, the Revenue conducted certain inquiries and proceeded against them to demand reversal of credit on inputs found short and excise duty on finished goods found excess. Finally, the case was adjudicated by the Original Authority, who allowed adjustment of shortage of raw material and finished goods against excess found during stock taking and ordered reversal of Cenvat credit in respect of inputs found short and demanded duty on the finished goods found excess. Aggrieved by the impugned order, both the assessee as well as Revenue are in appeal before us.

4. Heard Shri Hemant Bajaj, learned advocate for the appellants and Shri H C Saini, learned DR for the Revenue. After hearing both

the sides, it appears that identical issue has came up before the Tribunal in appellants own case for the earlier period. Tribunal vide Final Order No. 52490-52491/2015 dated 04.08.2015 has observed as under:

> *"5. The admitted facts of the case are that the assessee is having computerized accounting which manages end to end operations i.e. from the set of procurement of raw material to sale of finished goods. It is also admitted fact that there are large varieties of raw materials, work-in-progress and finished products. The consumption of raw material goods which are used in process of making and the finished goods are not physically numbered and accounted on day-to-day basis. The standardized system of accounting based on measurement and conversion of raw material to finished product on weight/length basis is fed to the computer. The assessee undertakes with the help of cost auditor stock verification on annual basis to reconcile the inventory position. In such a situation it is but natural that minor variation (0.5% and below) do occur during reconciliation. The explanations provided by the assessee during the original proceedings have been accepted by the lower authority and he allowed the possibility of shortages and excesses in respect of various individual category of raw materials and finished goods. However, he confirmed the reversal of credit in respect of raw material found short after netting of excess with shortage among various varieties. Same method has been adopted for finished goods also. We find that the shortages and excesses found during physical stock verification which remained un-reconciled are within the tolerance limit keeping in view the thousands of types of raw*

material and finished goods involved in the accounting by the assessee. Such view has been taken by this Tribunal in the case of Maruti Udyog Ltd. vs. CCE, Delhi – III reported in 2004 (173) E.L.T. 382 (Tri. – Del.) and in Widia India Ltd. vs. CCE, Bangalore reported in 2007 (207) E.L.T. 562 (Tri. – Bang.) later affirmed by the Hon'ble High Court of Karnataka – 2010 (255) E.L.T. 36 (Kar.). Another important point to be noted here is that while the whole discrepancy in physical stock has come to light only as per the stock taking conducted by the assessee, there is no allegation or evidence to the effect that the shortages/excesses are not attributable to accounting errors or complexities but are due to unaccounted clearances finished goods and consumption of raw material. In the absence of any such corroboration the assessee's plea on the non-sustainability of order reversing credit or demanding duty has strong force and is to be admitted. Accordingly, we find the reversal of credit on the raw material and the demand of duty on the finished goods solely on the ground of physical stock taking done by the assessee is not sustainable in the facts and circumstances of the present case.

6. On the appeal filed by the Revenue against Commissioner's order of allowing adjustment of shortage with excess, we find the lower authority has given a detailed reasoning with illustrations in paras 40, 41 and 42 of the impugned order. The Revenue's plea is that verification should have been done by the officers before the Commissioner allowed such adjustment. We find that the physical inventory was in fact done by the assessee and the Revenue came into the picture much later. In any case, the nature and possibility of *accounting error not being denied the adjustment as ordered by the Commissioner on the clear reasoning cannot be faulted. We find that remand of the case on this ground will not serve any purpose. In any case the assessee's appeal having been allowed we find no further reason for remand.*

7. Considering the above discussion and findings, the appeal filed by the assessee is allowed with consequential relief, if any. Revenue appeal is dismissed. The miscellaneous application is also disposed of."

5. By following our earlier order, we dismiss the appeal filed by department and allow the appeal filed by the assessee.

(Dictated and pronounced in the open Court)

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

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