IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-DB

COURT –II

Excise Appeal No.E/53613/2014- [DB]

[Arising out of Order-in-Original No.JAI-EXCUS-002-COM-128-13-14 dated 30.03.2014 passed by the Commissioner of Central Excise, Jaipur-II]

M/s. Sangam (India) Ltd. …Appellant

Vs.

C.C.E., Jaipur-II … Respondent

Present for the Appellant : Mr.Amit Jain, Advocate & Mr. Rahul Tangri, C.S.

Present for the Respondent: Mr.H.C. Saini, D.R.

Coram: HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of Hearing / Decision : 03/10/2017

FINAL ORDER NO. 57029/2017

PER: ASHOK JINDAL

The appellants are in appeal against the impugned order dated 30.03.2014, wherein demand under Section 11D (1) of the Central Excise Act, 1944 has been confirmed against the appellant.

2. The brief facts of the case are that the appellants have obtained EPCG licenses and procured capital goods against those licenses and some capital goods has been procured domestically on payment of duty as the appellant was having EPCG licenses then they took refund of terminal excise duty paid on domestically procured capital goods. Against the EPCG licenses the appellant discharged their export obligation and got EODC. Thereafter, on 03.05.2008 a fire took place in the factory premises of the appellant, wherein the capital goods were destroyed. The appellant filed insurance claim with the insurance company as per the agreement with the insurance company for insurance of the capital goods in question, as the claim of insurance include excise duty element, which has been allowed by the insurance company. Therefore, Revenue is of the view that the amount received from the insurance company as excise duty is payable by the appellant under Section 11D (1A) of the Act. In these set of facts, proceedings were initiated against the appellant for recovery of the amount paid by the insurance company as excise duty to the appellant. The matter was adjudicated. The Adjudicating authority hold that as the appellant initially taken refund of the duty paid on the capital goods and again received the amount of excise duty from the insurance company. Therefore, they have taken double benefit of duty paid on capital goods which is not

available to the appellant and confirmed the demand of amount on account of excise duty paid by the insurance company under Section 11 D (1A) of the Central Excise Act, 1944.

3. Aggrieved with the said order, the appellant is before us.

4. The ld. Counsel for the appellant submits that the facts of the case are not in dispute as the appellant obtained the capital goods against the EPCG license and took the refund of Terminal Excise duty. It is also not disputed that the appellant has discharged their export obligation and EODC has been obtained. The appellant has received insurance claim from the insurance company for replacement of the capital goods lost in fire. As the appellant have not manufactured these capital goods nor sold these capital goods, in that circumstances, provisions of Section 11D (1A) of the Act are not applicable to the facts of the present case. It is also contended that appellant has not taken any double benefit of duty paid on these capital goods as while taking refund of terminal excise duty the appellant was under an obligation to export a certain quantity of goods manufactured by using these capital goods which they have discharged and Insurance Company has paid excise duty on account of replacement of capital goods. Therefore, the appellant have not taken any benefit on the excise duty paid by the insurance company. In support of his contentions, the ld. Counsel relied on the decision of the

Hon'ble Apex Court in the case of Mafatlal Industries reported in 1997 (89) ELT 247 (S.C.) and Tata Advance Materials Ltd. – 2011 (271) ELT 62 (Kar.) & Barodia Plastics Pvt. Ltd. Vs. CCE - 2015 (315) ELT 357 (P & H).

5. On the other hand, the ld. A.R. oppose the contention of the ld. Counsel and submits that as appellant has taken refund of terminal excise duty and also taken claim from the insurance company on account of excise duty paid on the capital goods. Therefore, they have availed double benefit and whatever duty received from insurance company, provisions of Section 11 D (1 A) are squarely applicable to the facts of this case.

6. Heard the parties and considered submissions. In this case, facts are not in dispute as the appellant against EPCG licence had procured capital goods domestically on payment of duty and have availed refund of terminal excise duty paid thereon. It is also fact on record that appellant has discharged their export obligation, in terms of EPCG licenses granted to them. The only dispute is that the appellant has received certain amount on account of excise duty on the capital goods lost in fire on 03.05.2008 and the duty has been demanded by invoking provisions of Section 11D (1A) of Central Excise Act,

1944 . For better appreciation, provisions of Section 11D (1A) are extracted herein below:-

> *11D(1A) : Every person, who has collected any amount in excess of the duty assessed or determined and paid on any excisable goods or has collected any amount as representing duty of excise on any excisable goods which are wholly exempt or are chargeable to nil rate of duty from any person in any manner shall forthwith pay the amount so collected to the credit of the Central Government.*

7. On going through said provision, we find that if any person collects any amount in excess of the duty paid on any excisable goods which are wholly exempt. Therefore, it is to be seen whether appellant has collected the amount from insurance company of duty paid on excisable goods. Now question arisen whether the capital goods are excisable goods in the hand of the appellant or not. Admittedly, as per Section 3 of the Central Excise Act, 1944, duty is to be paid by the assessee on manufactured goods. The capital goods in question were never manufactured by the appellant. Therefore, in the hands of appellant the capital goods in question is not an excisable goods. As the goods in question are not excisable goods, therefore, provisions of Section 11D (1 A) are not applicable to the facts of this present case. In that

circumstances, the demand confirmed against the appellant under Section 11 D (1 A) of the Act is not sustainable.

8. We also hold that as the appellant paid duty on these excisable goods and in terms of EPCG Licenses issued to them they availed refund of terminal excise duty paid by them on these capital goods and discharge has been given to the appellant while discharging their export obligation of refund of terminal excise duty paid by them. We, further take note of the fact that insurance company has given the claim as per the agreement between the appellant for replacement of capital goods lost in fire, which includes excise duty element. If appellant is purchasing capital goods they were required to pay excise duty thereon. Therefore, there is no double benefit as availed by the appellant. In that circumstance, the impugned order has no merits. Hence, the impugned order is set aside.

9. In the result, appeal is allowed with consequential relief, if any.

[Dictated and pronounced in the open Court]

(B. RAVICHANDRAN) **MEMBER (TECHNICAL)**	**(ASHOK JINDAL)** **MEMBER (JUDICIAL)**

Anita