

**CUSTOMS EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,**

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

COURT-I

Date of hearing: 25.09.2017

Date of Pronouncement: 26.10.2017

Appeal No. E/197-198/2007-EX[DB]

[Arising out of the Order-in-Appeal No. 255-256(GRM-CE/JPK-I/2006 dated 01/11/2006, passed by the Commissioner of Central Excise, Jaipur]

M/s. Garg Ispat Udyog Ltd. ... Appellant
Shri J.D. Gupta, MD

Vs.

C.C.E. Jaipur ... Respondent

Appearance:

Present Shri J. P. Kaushik, Advocate for the appellant

Present Shri M.R. Sharma, DR for the respondent

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

FINAL ORDER No. 57377-57378 /2017

Per V. Padmanabhan:

The present appeals have been filed against the Order-in-Appeal number 255-256/2006 dated 01/11/2006.

2. The brief facts of the case are that the appellant / assessee is engaged in the manufacture of various types of M S pipes. some quantity of these M S pipes were cleared to PHED Rajasthan availing the benefit of exemption under notification number 6/2002-CE dated 01.03.2002. Disputes arose regarding the certificates produced by the appellant from the District

Collector to avail the above exemption notification. In cases where goods were cleared under exemption, the Department also was of the view that an amount as prescribed under rule 6(3) of the Cenvat Credit Rules 2004 is required to be paid by the appellant. The lower authorities accordingly raised demand for excise duty along with interest and penalty. Penalty was also imposed on Sh. J.D.Gupta, MD. Aggrieved by the impugned order passed by Commissioner (Appeals), the present appeals have been filed by the assessee as well as Sh. Gupta, MD.

3. With the above background we heard Shri J. P. Kaushik, Advocate for the appellant as well as Shri M.R. Sharma, DR for the respondent.

4. After hearing both sides, we propose to discuss the issues one by one as follows:

i) The appellant has been availing Cenvat credit. In respect of clearances made availing full exemption from payment of duty, Department raised a demand for reversal of an amount as per rule 6(3) of the CCR 2004. In addition, for some of the clearances made as above, the Department noticed that reversal was made @ 8% as against the requirement of @ 10% during the relevant time. As soon as the same was pointed out, the appellant reversed such amounts along with interest. In spite of this, in the impugned order, penalty has been imposed in terms of rule 15 of the CCR 2004. This has been challenged in the present appeal.

We note that the demand for reversal has been raised in terms of section 11A of the Central excise act 1944 under the normal time limit. Section 11A (2B) ibid. Provides that if the disputed amount of duty along with interest is paid before the issue of SCN, then no penalty shall be imposed. In fact the SCN is not to be issued in such cases. In as much as there is no dispute about the payment of duty with interest before issue of SCN, we are of the view that imposition of penalty is not justified and hence is set aside.

ii) The next issue for consideration is the availment of benefit of notification No. 6/2002. As per the requirement under the notification the assessee is required to produce a certificate from the District Collector indicating the quantity of pipes required, the purpose for which it is required etc. The Department is of the view that in some cases the required certificate has not been produced from the District Collector. In some other cases, it is recorded that the certificates produced were not in the prescribed format. Hence demand of duty has been raised.

It is the submission of the learned counsel is that at the time of clearance of the goods, there was no prescribed format for issue of such certificates. The form was prescribed later by the CBEC. He further submits that out of 35 invoices in which the present dispute is there, in respect of 22 invoices the Department has already

demanded reversal of credit under rule 6(3) covered in the 1st issue.

5. After perusal of record, we are of the view that the matter is required to be sent back to the adjudicating authority. In those cases where the appellant has failed to produce the certificate from the District Collector, the duty will have to be paid along with interest. However in those cases where the District Collector has issued the certificate in a format which is different from that subsequently prescribed by CBEC, the adjudicating authority is directed to examine the certificates already issued by the District Collector and extend the benefit if the essential details required for extension of the notification benefit is already available in the certificates. The benefit of the notification cannot be denied only for the reason that the certificates are not in the proper format. In this regard, in the de novo proceedings, additional evidence may be admitted as per law.

6. The last issue for consideration is that the Department noticed that in the internal payment slips found in the appellants records, lower payment was shown as compared to the rate mentioned in the corresponding invoices. The Department has alleged that the difference in quantity of goods have been clandestinely cleared. The claim of the appellant is that in cases where invoiced quantity is higher than those recorded in payment slips, duty has already been paid on a higher quantity and hence there is no justification for demand.

7. After perusal of record, we find that the invoiced quantity have been found to be more than the quantities recorded in the internal payment slips. Hence we are inclined to accept the appellant's argument that more duty has been paid in those cases. In any case the Department has not placed on record any evidence to substantiate the charge of clandestine clearance. Hence we find no justification to uphold the demand which is set aside.

8. Sh.J.D. Gupta, MD has also filed an appeal challenging the penalty imposed on him under rule 26.

9. After perusal of record, we find that no specific allegation has been made out in the SCN against the MD. Further, we find no justification for any imposition of penalty against the appellant assessee. Consequently, the penalty on the MD also is required to be set-aside.

10. In view of the above discussions the impugned order is modified as above. The case is remanded to the adjudicating authority for passing de novo orders only in respect of the denial of the benefit of notification number 6/2002.

[Order Pronounced in the open court on **26.10.2017**]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member