IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 24.11.2017

Appeal No. E/51353/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-001-APP-10-17-18 dated 13.4.2017 passed by the Commissioner (Appeals), Central Excise, Bhopal)

M/s Him Teknoforge Ltd. Appellant

Vs.

CCE, Indore Respondent

Appearance

Ms. Priyanka Goel, Advocate - for the appellant

Ms. Kanu Verma Kumar, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58174/2017

Per S.K. Mohanty :

This appeal is directed against the impugned order dated 13.4.2017 passed by the Commissioner (Appeals), Customs & Service Tax, Bhopal.

2. The brief facts of the case are that the appellant is engaged in the manufacture of forgings of steel, falling under Chapter Heading No. 7326 of the Schedule to Central Excise Tariff Act, 1985. The appellant avails Cenvat credit of Central Excise duty paid on inputs and capital goods and service tax on the input services. The Cenvat

credit so availed, are utilized by the appellant for payment of duty on clearance of the final product from the factory. During the period 2010-2011, the appellant had removed the finished goods on payment of Central Excise duty from the Cenvat account. The said goods removed from the factory were returned back by the buyers. On receipt of those goods in the factory premises, the appellant availed Cenvat credit of Central Excise duty as reflected in the invoice received along with the goods. It is the allegation of the department that the appellant after receipt of the said goods from the buyer, removed the same as such and accordingly, the appellant was liable to reverse the equivalent amount of Cenvat credit taken by it at the time of receipt of the finished goods from the buyers. On the basis of such observations, the department initiated the show cause proceedings against the appellant, which culminated in the impugned order dated 1.2.2010, wherein differential Central Excise duty amounting to Rs.1,95,200/- along with interest was confirmed on the appellants. Besides, penalty of equivalent amount was imposed under Rule 25 of Central Excise Rules 2002 read with Section 11AC of Central Excise Act, 1944. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 13.4.2017 has upheld the adjudged demand confirmed by the adjudicating authority.

3. The ld. Advocate appearing for the appellant submits that the goods received from the buyers were subjected to various processes in the factory of the appellant and after undertaking such process, the same were removed from the factory on payment of Central Excise duty on the transaction value in terms of Section 4 ibid. She further submits that since the appellant did not remove the goods in as it is condition received from the buyer, the restriction contained in sub rule (2) of Rule 16 ibid will not be applicable for payment of amount equal to the Cenvat credit taken by the appellant.

4. On the other hand, ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order and further submits that the appellant had not intimated the departmental officer as to the specific operations, which were carried out to the goods received from the buyers and subsequently, removed from the factory on payment of duty on transaction value.

5. Heard both sides and perused the record.

6. I find that the ld. Commissioner (Appeals) vide the impugned order has made categorical finding that the appellant had not produced any evidence to show what specific manufacturing activities were undertaken by it on the goods received from the buyers. Since the onus lies on the appellant to show that the finished

goods received from the buyers were in fact subjected to certain processes carried out in its factory, I am of the view that the plea raised by the appellant that goods were removed as such, cannot be accepted. However, considering the submission of the ld. Advocate that the appellant is in possession of adequate material to demonstrate that the goods received from the buyer were further processed in its factory and thereafter, were sold to the buyers, I am of the view that the matter can be remanded to the original authority for verification of the documents to be produced by the appellant. On perusal of the documents to be submitted by the appellant, if the original authority satisfies himself that the goods received from the buyers were not removed from the factory on as it is condition and the same were further refined or reconditioned or remade in the factory and thereafter, were sold to the buyers, the benefit of rate of duty under the transaction value, as per Section 4 ibid should be extended to the appellant.

7. In the result, the impugned order is set aside and the appeal is allowed by way of remand to the original authority.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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