IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL,
WEST BLOCK NO.2, R.K. PURAM, NEW DELHI-110066

BENCH-SM

COURT –IV
Excise Appeal No. 56264/2013- [SM]

[Arising out of Order-in-Appeal No. III/CE/D-II/12 dated 10.12.2012 passed by the Commissioner CE (Appeals), Delhi-II]

Nitin Industries …Appellant

Vs.

C.C.E., Delhi-II … Respondent

Present for the Appellant : Mr. N.K. Sharma, Advocate.
Present for the Respondent: Mr. G.R. Singh, A.R.

Coram: HON'BLE MR. ANIL CHAUDHARY, MEMBER (JUDICIAL)

Date of Hearing.17.10.2017
Date of Decision.07.02.2018

Final Order No. 50555 /2018

Per ANIL CHAUDHARY:

The issue is in this appeal is whether goods received back after job work covered under bill/ invoices/ cash memo issued by the job worker and not under duplicate copy of original challan through which goods were sent for job work is a valid document or not.

2. Brief facts from order-in-appeal:

M/s. Nitin Industries, Z-57 Okhla, Industrial Area, PH-II, New Delhi(Appellant) are registered with the Central Excise vide Registration No. AAZPG9664KXMOOI and engaged in the manufacturing of Sheet Metal Components and steel Fabrication falling under CETH 84289080, 84139190 and 73012090 of the First Schedule to the Central Excise Tariff Act, 1985, are availing the facility of Cenvat Credit under Cenvat Credit Rule 2004.

Whereas, it has been observed that during the period from 2006-07 to 2010-11 (till 12.11.2010). M/s. Nitin Industries have been sending the goods for job work purposes to various job workers under job work challans issued by them. the said goods were required to be retuned back in the factory within 180 days from the date of dispatch as provided under rule 4 (5) (a) of Cenvat Credit Rules, 2004 read with notification no. 214/86-CE dated 25.03.1986 under the cover of duplicate copy of the job work challan originally sent by M/s. Nitin Industries containing the proper endorsement of details by the consersed job *workers. However, during the scrutiny, it has been found that M/s. Nitin Industries have not received back the consignments sent for job work from the job workers because the relevant job work challans do not contain the details of return of the goods from the job workers. The value of such consignments calculated in view of the provisions of Rule 11 read with Rule 8 of Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000 during the period form 2006-07 to 2010-11(Annexure-A) works out to Rs. 40,05,370/- (Rs.36,41,245,/- + Rs. 3,64,125/-) on which duty amounting to Rs. 5,90,330/- appears to have been evaded.*

3. Accordingly, show cause notice was issued dated 05.05.2011 and it appears that the appellant have not followed the prescribed procedure under notification no. 214/86-CE, and have clandestinely removed goods in the garb of job work. Accordingly, appellant is require to show cause duty amounting to Rs. 5,90,330/- which was leviable on the goods sent for job work propose, without payment of duty, be demanded under Section 11A read with the proviso

for extended period. Further interest and penalty is also proposed. The SCN was confirmed on contest and proposed demand confirmed alongwith equal amount of penalty under Section 11 AC of the Act.

4. Being aggrieved the appellant preferred appeal before the ld. Commissioner (Appeal) who was pleased to dismiss the appeal observing that it is not a mere procedure lapse because the procedure laid down was envisaged to have a proper correlation between goods initially sent by the manufacturer to the job worker without payment of duty and ensure the goods received back from the job worker. Due to failure to follow the procedure, correlation as required was not possible

5. The ld. Counsel for the appellant argues that the appellant have sent the goods on job work on proper job work challan as evident from sample of such challan annexed to the paper. Further, the ld. Counsel states that the only procedural lapse is that, the job worker instead of returning the job worked goods by making endorsement in part-II of the same challan have returned the goods vide

separate challan. From the copy of such challan annexed in the paper book, the ld. Counsel points out that the challan of the job worker mentions the items being returned after job work, the rate charged by the job worker, the amount and also refers to the challan no. of the appellant by which the goods were received by the job worker. Thus all the necessary information as required was available. Further as the challan no. of the appellant/ principal was mentioned on the challan of the job worker the correlation was also very much possible. Further, the appellant have also filed extracts of the job work register, a copy of which available in the paper book, wherein they have mentioned the challan no., date, description of goods/ quantity, approximate value sent to the job worker and further the said register contains the details of when the goods were received back from the job worker, challan no. of the job worker entry no. in the register of the appellant, quantity shortage or the excess, if any. Thus, the appellant properly re-corded the goods which were sent on job work and it is not disputed by Revenue that the same is not received back after the job work. The ld. Counsel further draws of my attention that under Cenvat Credit Rules, under Rule 4(5)(a) as of the applicable during the period under dispute. There is no requirement of any prescribed format of challan for sending the goods on job work. The only requirement is that the goods sent on job work must be received back by appellnat within a period of 180 days of such extended period as may be permitted by the competent authority. The ld. Counsel have further drawn my attention to the fact that the relevant notification no. 214/86_CE, Which prescribed the relevant challan have been rescinded by notification no. 16/2000-CE 01.03.2000, as such there is no such provisions, under the law also. Accordingly, ld. Appeal prays for allowing appeal with consequential relief.

6. The ld. AR for Revenue relies on the impugned order.

7. Having heard the rival contentions, I am satisfied that the appellant have not violated the provisions of the law/rules in respect to job work as required under the provisions of Rule 4(5)(a) of CCR,

2004 (as applicable). Further, I find that it is not disputed by the Revenue that the goods sent on job work have not been received back. Further the appellant have to kept proper account of the goods sent on job work and receipt of the same after completion of the job work. Accordingly, I find that the show cause notice is not sustainable. Accordingly, this appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefit in accordance with law.

(Pronounced in the open court on 07.02.2018)

(**ANIL CHAUDHARY**)
Member (Judicial)

Sakshi