CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
NEW DELHI, PRINCIPAL BENCH NEW DELHI

Date of Hearing/Decision:29.01.2018

Excise Appeal No.51785/2017(SM)
[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-145A-17-18 dated 07.09.2017 passed by the Commissioner of Central Excise (Appeals), Indore (M.P.)]

M/s.Mahle Engines Components India Pvt. Ltd. Appellants

Vs.

CCE, Indore Respondent

Appearance:

Rep. by Shri D. K. Tyagi, Advocate for the appellant.
Rep. by Shri G. R. Singh, AR for the respondent.

Coram: Hon'ble Shri S. K. Mohanty, Member (Judicial)

Final Order No. 50659/2018

Per S.K. Mohanty:

The brief facts of the case are that the appellant is a registered central excise assessee and is engaged in manufacture of Camshaft castings, Valve Tappet, Exhaust manifold, Valve guide falling under Chapter Heading no.7325.10 and 8409.00 of the first schedule to the Central Excise Tariff Act 1985. The appellant avails cenvat credit of central excise duty paid on inputs/capital goods and service tax on the taxable services under the provisions of Cenvat Credit Rules, 2004. During the disputed period, the appellant had changed classification of Camshaft from Chapter Heading No.84831099 to 73259910 and paid duty @ 10.36%, instead of applicable rate of duty of 12.36%. The short payment of duty by the appellant on account of change in classification of goods was noticed by the Central Excise Audit Wing and accordingly, the appellant had deposited duty along with interest before issuance of show cause notice. However, while adjudicating the matter, the ld. Adjudicating Authority has imposed penalty of Rs.27,70,115/-on the appellant under Section 11AC of the Central Excise Act, 1944. Further, Cenvat credit amounting to Rs.1,82,242/- availed by the appellant for painting of the factory building as well as machines was denied by the Original Authority on the ground that such service is in relation to construction of building and falls under exclusion clause of the definition of "input service" contained in Rule 2 (l) of the Cenvat Credit Rules, 2004. Besides confirmation of the Cenvat credit demand, the Original Authority has also imposed equal amount of penalty of Rs.1,82,242/- on the appellant under Rule 15(2) of the Rules 2004. The ld. Commissioner (Appeals) vide the impugned order dated 7.9.2017 has upheld the adjudged demand confirmed on the appellant. Hence, the appellant has filed this appeal before the Tribunal.

2. Ld. Advocate appearing for the appellant submits that change in the classification of the goods and payment of duty @10.30%was brought to the notice of the Department in ER-I returns filed for the relevant period. Thus, he submits that the charges of fraud, collusion, willful mis-statement cannot be leveled against the appellant for imposition of penalty under Section 11 AC of the Act. He further submits that painting of the factory buildings and machineries installed therein is conforming to the definition of "input service" under the inclusive part contained therein and accordingly, service tax amount paid by the service provider is eligible to the appellant as cenvat credit.

3. On the other hand, ld. DR appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both the sides and perused the case records.

5. I find that the appellant had changed the classification of the Camshaft from Chapter Heading 84831009 to 73259910 by paying duty @ 10.36%, instead of prescribed rate of 12.36%. Such mistake was brought to the notice of the appellant by the Central Excise Audit Wing and the appellant deposited differential amount of duty along with interest before adjudication of the show cause proceedings. The duty amount along with interest deposited by the appellant has also been discussed in the adjudication order. However, the adjudication order has imposed penalty under Section 11 AC of the Act. On perusal of the ER-Return for the relevant period, I find that the appellant had disclosed the payment of duty of 10.30% attributable to the product of Chapter 73259910. Thus, malafide cannot be attributed to the appellant, justifying the invocation of the provisions of Section 11 AC of the Act for imposition of equal amount of penalty. Since the said statutory provisions mandates imposition of penalty only in case of fraud, suppression, willful mis-statement, etc., with intent to evade payment of duty, which in this case is absent, I am of the considered view that imposition of penalty by the Authorities below under Section 11 AC of the Act cannot be sustained.

6. With regard to the availment of cenvat credit of the service tax on painting of the factory building & machinery, I find that the Authorities below have denied cenvat credit on the ground the construction of building or civil structure is falling under the Exclusion Clause contained in the

definition of "input service" under Rule 2 (l) of the Rules. However, on perusal of the sample copies of the invoices issued by the service provider, I find that the services were provided in relation to the painting of the factory building and plant & machinery, which are appropriately classifiable under category of "renovation or repair of the factory" contained in the Inclusive part of the definition of the "input service". Thus, I am of the considered view that such service falls under the purview of the "input service" for the purpose of availment of cenvat credit. Therefore, denial of cenvat credit and imposition of penalty on the appellant will not be sustainable.

7. In view of the above, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal of the appellant.

[order dictated and pronounced in the open court]

(S.K. Mohanty)
Member (Judicial)

ckp.