IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Date of Hearing: 21/05/2018
Date of pronouncement: 29/05/2018

Appeal No. E/50680-50681/2018

(Arising out of Order-in-Original No. 001/AC/13/16/17 dated 30.11.2016 passed by the Commissioner(Appeals-1) Central Excise. GST & Central Excise, New Delhi)

AJAY MEHRA
DIRECTOR, JAQUAR & COMPANY Pvt. Ltd — Appellant

Vs.

C.E, C & C.G.S.T-DELHI 1 — Respondent

<u>Appearance</u> ,

Sh. S.K. Pahwa, Rohan Pahwa,Advocate - for the appellant

Sh H.C.Saini, D.R. - for the respondent

CORAM: **Hon'ble Mr. Bijay Kumar, Member (Technical)**

Final Order No. 52031-52032/2018

Per: Bijay Kumar Member(T)

The present appeal has been filed against the impugned order wherein the appellate authority has upheld the Order-in-Original No.DLI-EXCUS-001/AC/13/16/17 dated 30/11/16 passed by the Assistant Commissioner Excise, New Delhi. This order is against the two appeals, namely, E/50680/18-54 and E/50681/18 filed by the appellants.

2. The brief facts are that the appellant are manufacturer/ Director of the firm engaged in the manufacture of CP bath fitting such as Bib cock, Piller Cock, long body concealed wall mixer, Basin mixer, etc. classified under chapter heading 84818020 of first Schedule of Central Excise Tariff Act,1985. During the search operation conducted by the Central Excise Officer on the appellant at their factory/offices and residential premises, it was found that they are engaged in purchase of document, evidencing the payment of Central Excise duty, to avail inadmissible Cenvat credit without receiving any input, on payment of consideration in paid in cash. During search operation, various goods, valued at Rs. 2,26,60,000/- was also noticed for which there was no proper documentation.

3. The appellant were issued the Show Cause Notices and the case was adjudicated upon by confirming the demand of the same amount under Rule 25 of Central Excise Rule, 2002 and a penalty was also imposed under Rule, 15 of Cenvat credit Rule read with Rule 25 of Central Excise Rules,2002. The penalty of Rs. 23,33,980 was also imposed on the Director of appellant company Sh. Ajay Mehra, under the provision of Rule 15 of Cenvat Credit Rule, 2004 read with Rule 26 of the Central Excise Rules. The demand was confirmed by the adjudicating authority for non-accountal of imported goods , namely, imported hand showers, which was fond lying in the appellant's warehouse located at C 20, SMA (cooperative) industrial State, GT Karnal Road, New Delhi.

4. The Commissioner (Appeal) in the impugned order at paragraph 12 held that bills of entry relied upon by the appellant was more than three years old and in name another unit located at Biwandi, whereas the goods were seized in Delhi.

Further, instead of two types of hand showers imported under the subject Bill of Entry, three types of showers had been seized and documents other than Bill of Entry was not produced by the appellant. Therefore, the Commissioner (Appeal) rejected the appellant claim that the imported goods were Customs duty paid and same one, which was imported vide for aforetasted Bill of Entry.

5. The Learned Advocate submits that the goods were seized on account of non-production of any valid document regarding lawful possession of the goods and submits that the goods are not liable to confiscation under Rule, 25 of Central Excise Rule,2002, as there was no allegation in the Show Cause Notice justifying the confiscation under the said rule. The goods were cleared on payment of Customs duty at the strength of above Bill of Entry. He also submits that there were some inventory mix up at exporter is end and the goods were found to be different than what was ordered by the appellant.

6. The allegation that the appellant was engaged in fraudulent involvement of Cenvat credit on the strength of bogus invoices without supply of the goods by various raw-materials suppliers has not been the subject matter of Show Cause Notice. The impugned order held that the imported goods found in the godowns of the appellant are liable of confiscation under Rule 25 of Central Excise Rule. This Rule has been framed by the Central Government under Section 37 of Central Excise Act,1944. In terms of section 37 of the Act, the Central Government is empowered to make rules for carrying out the provisions Central Excise Act and Rules, and is not applicable to imported goods unless, those imported goods are further used in the manufacture of finished goods in India.

The Ld. Adv also states that the MRP of the aforesaid imported good was disclosed by store in charge Mr. Mahinder Sharma without ascertaining the fact regarding price of the product. From the record of the Appellant Company.

7. Learned DR reiterate the facts contained in the impugned order.

8. I have heard the parties and also perused the case records. It is undisputed fact that goods seized by the department happened to be imported goods, which were not accounted for in the books of the account of the appellant. The impugned order affirms, the findings of the learned adjudicating authority regarding the confiscation of these goods under provisions of Rule 25 of Central Excise Rule and imposition of penalty under Rule 15 of Cenvat credit read with Rule 25 of Central Excise Rule, 2002 So is the case of imposition of penalty under rule 15 of Cenvat Credit Rule ready with Section 26 on Sh. Ajay Mehta the Director of the company. For better appreciation of the fact it is relevant to reproduce the provisions of Section 25 of the Central Excise Rule, 2002 which reads as under.

Rule 25. Confiscation and penalty-

(I)Subject to the provisions of section 11 AC of the Act, if any producer, manufacturer, registered person of a warehouse or a registered dealer,-

(a) remove any excisable goods in contravention of any of the provisions of these rule or the notification issued under these rules; or

(b)does not account for any excisable goods produced or manufactured or stored by him; or

©engages in the manufacture, production or storage of any excisable goods without having applied for the registration certificate required under section 6 of the Act; or

(d)contravenes any for the provisions of these rules or the notification issued under these rules with intent to evade payment of duty, the, all such goods shall be liable to confiscation and the producer or manufacture or registered person of the warehouse or a registered dealers, as the case may be, shall be liable to a penalty not exceeding the duty on the excisable goods in respect of which any contravention of the nature referred to in the clause(a) or clause(b) or clause (c) or clause(D) has been committed, or{ rupees two thousand, }whichever is greater.

(2) An order under sub-rule (1) shall be issued by the Central Excise officer, following the principles of natural justice.

9. The excisable goods have been defined under Section 2(d) of the Central Excise Act which is as under;

2(d) "excisable goods" means goods specified in the First Schedule and the second Schedule to the Central Excise Tariff Act, 1985(5 of 1986) as being subject to a duty of excise and includes salt;

Explanation-for the purposes of this clause, "goods" includes any article, material or substance which is capable of being bought and

sold for a consideration and such goods shall be deemed to be marketable.

10. After perusal of rule 25 and of the Central Excise Rule, 2002 and 2 (d) of the Central Excise Act, 1944 it is clear that the provisions contained therein are applicable only to the excisable goods. In other words these provisions cannot be extended to imported goods without mentioning the charge in the SCN about the provisions of Customs Act made applicable to Central Excise matters vide Notification, which is not the case here. It is on record that the goods seized and confiscated are imported goods, and therefore, the provision of these Rules, 25/26 is not applicable to the sized imported consignment in the case of hand. It is not coming from order as to whether the appellant has availed in Cenvat credit on the goods. If that is so, the provisions of Cenvat credit Rule also cannot be attracted to the seized goods. I, therefore, allow the appeal.

11. As a no contravention of any provisions of Central Excise Act and Rule have been found in the case of seized goods, there is no question of imposition of any penalty on the Sh. Ajay Mehra under the provisions of Central Excise Act, Central Excise Rule and Cenvat credit Rules, and thus that appeal is also allowed.

(Pronounced in open court on 29/05/2018)

(Bijay Kumar)
Member (Technical)

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