CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
HYDERABAD

REGIONAL BENCH - COURT - I

Central Excise Appeal No. 962 of 2011

(arising out of order-in-Original No 18/2010-CEx-Commr dated 11.08.2010 passed by Commissioner of Customs, Central Excise & Service Tax, Guntur)

Andhra Pradesh Heavy Machinery & Engineering Ltd
Units and Kondapalli & Vjayawada,
Andhra Pradesh

Appellant

Versus

The Commissioner of Central Excise
C.R. Building,
Kannavarithota,
Guntur

Respondent

Appearance:

Mr S. Thirumalai, Adv for the Appellant

Mr C. Mallikarjuna Reddy A.R. for the Respondent.

CORAM

HON'BLE Mr Ashok Jindal, Member(Judicial)
HON'BLE Mr. P. Venkata Subba Rao, Member (Technical)

FINAL ORDER No. 30475/ 2020

Date of Hearing: 12/02/2020

Date of Decision: 12/02/2020

[ORDER PER:ASHOK JINDAL]

Appellant is in appeal against the impugned order where demand of duty has been confirmed against them holding that the activity undertaken by the appellant amounts to manufacture in terms of Section 2(f) of Central

Excise Act 1944.

2. The brief facts of the case are that appellants are manufacturers Haulers, Belt Conveyors, Road Headers and Spares used in mines. Initially, the appellant was under impression that the activity undertaken by them does not amount to manufacture. Therefore, they were not paying the duty. The issue whether the activity undertaken by the appellant amounts to manufacture or not was under dispute. Therefore, various periodical show-cause notices were issued to the appellant for the period January 2006 to November 2009. It was held that activity undertaken by the appellant amounts to manufacture. Therefore, they are liable to pay duty along with interest and penalties are also imposed on the appellant. Against the said order, appellant is before us.

3. The learned counsel appearing on behalf of the appellant submits that the appellant is not disputing that their activity does not amount to manufacture. The only prayer made by the appellant is that as their activity amounts to manufacture, they are entitled to take CENVAT credit on inputs and input services used in manufacture of such goods. As per the tender clause and various agreements, they were having price variation clause. The benefit of that price variation clause is to be allowed to them and the matter needs to be remanded back to the adjudicating authority for calculation of correctdemand of duty and to pass an order accordingly.

4. Learned A.R. also agreed to these terms.

5. Heard the parties. Considered the submissions.

6. As it has been held by the adjudicating authority that activity undertaken by the appellant amounts to manufacture, therefore, in terms of Rule 3 of CENVAT Credit Rules 2004, the appellant is entitled to take CENVAT credit on inputs and input services used in manufacturing of the said excisable goods. Admittedly, the said benefit has not been granted by the adjudicating authority. Further, we find that the appellant has been able to show us the tender document as well as their purchase agreement show that on escalation of prices of raw material, the price of finished goods is to be revised and duty is to be paid on higher price. In case the price of raw material falls, the appellant is entitled to claim less amount of

the manufactured goods. Therefore, as per the said clause, as per price variation clause, the duty needs to be recalculated as per the amount received from the buyer towards supply of goods by the appellant. The same is required to be examined by the adjudicating authority. Therefore we do not find any merit in the impugned order. The same is set aside and the matter is sent back to the adjudicating authority to calculate the demand after allowing CENVAT credit available to the appellant on inputs and input services used in the manufacture of the goods cleared by them and in terms of price variation clause. The appellants are also entitled to the benefit of cum-duty price as given by the adjudicating authority himself in the impugned order.

7. The adjudicating authority is also directed to calculate the actual demand of duty payable by the appellant as discussed above and accordingly to find out whether any interest is payable by them or not. If any amount is payable by the appellant the same shall be paid along with interest within 30 days of the communication of the adjudication order.

8. Further, we find that this case as the issue is in dispute whether the activity undertaken by the appellant amounts to manufacture or not the same has been settled by this Tribunal vide an order dated 18.02.2010. Therefore, we hold that no penalty is imposable on the appellant.

9. With these terms, the appeal is disposed of.

(Order pronounced and dictated in open court)

(Ashok Jindal)
Member (Judicial)

(P. Venkata Subba Rao)
Member (Technical)

Neela reddy