IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Ex. Appeal No. 78451 of 2018

Arising out of Order-in-Appeal No.27/SLG-CGST/2018 dated 05.06.2018 passed by Commissioner of CGST & Central Excise, Siliguri.

M/s. Electroteknica Switchgears Pvt. Ltd.
M. G. Road, Balaka Scheme,
Kolkata, Pin-700104 **Appellant (s)**

VERSUS

Commr. of CGST & CX, Siliguri
C. R. Building, Harendra
Mukherjee Road, Hakimpara,
Siliguri-734001

Respondent (s)

APPERANCE :

Shri Shyamal Dey, Advocate for the Appellant
Shri A. K. Biswas, Suptd. (AR) for the Respondent

CORAM:

HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.75607/2019

Date of Hearing/Date of Decision : 12.06.2019

PER P. K. CHOUDHARY :

This is the second round of Litigation before the Tribunal.

Briefly stated the facts of the case are that the appellants are manufacturing Starter Panel, Motor Control Centre, Transformer and Transwitch etc, classifiable under Chapter 85 of the First Schedule of the Central Excise Tariff Act, 1985. It was alleged that the inputs sent to the Job worker under Challan No.180 dt. 16/07/2007, 294 dt. 14/09/2007 & 387 dtd. 29/11/2007 were not received back by the appellant after repair/reprocessing etc. from the job worker's end within the stipulated period of 180 days and hence, the Cenvat Credit on those items were directed to be reversed. The matter came up to the Tribunal and the

Appellant assessee had produced a "job worker register" in respect of Account of Removal of inputs or partially processed goods under Rule 4 (5)(a) and/or Notification No. 214/86-CE dt. 25/3/1986."

2. It was observed by the Tribunal that the said register itself shows that they have received the processed goods from the job workers. In fact the matter was decided by the Tribunal in favour of the assessee by allowing their appeal and was remanded for the limited purpose that since the Register was not produced before the Adjudicating Authoring along with other relevant documents, it was remanded to the Adjudicating Authority for passing Denovo Order in accordance with the observations and directions of the Tribunal. The relevant portion of the Order of the Tribunal is reproduced:-

> *"Heard both sides and perused the records. I find that according to Rule 4(5)(A) of Central Credit Rules, 2004, the cenvat credit shall be allowed, in cases the processed goods are sent to a job worker for further processing and it is established from the records, challans or memos or any other documents produced by the manufacturer or provider of such services taking cenvat credit that the goods are received back in the factory within 180 days of their being sent to a job worker and if the inputs are not received back within the said period, the manufacturer or provider of output service shall pay an amount equivalent to the cenvat credit attributable to the said inputs by debiting the cenvat credit or otherwise. In such cases, the manufacturers or provider of output service can take the cenvat credit again when the inputs are received back in his factory or in the premises of the provider of output services. It is therefore, noticed that for the establishing receipt of the goods, the receipt can be established by the manufacturer or provider form the other co-relating documents/records in this regard. I find that the Register of accountal of inputs sent to the job worker was not produced before the adjudicating authority. I, therefore, remand the matter to the original authority for verifying from the documents produced by the appellant as to whether the inputs after processing were received back by the appellants. The appellants are also directed to produce the Register now shown before this Tribunal and other relevant documents to satisfy the adjudicating authority. Both sides agree that these issues require a fresh consideration by the original authority. In these circumstances, the order passed by the adjudicating authority is hereby set aside and the matter is remanded to the original authority for a fresh determination of the issue in dispute. Needless to mention, the appellants are at liberty to*

file necessary documents and a reasonable opportunity of hearing may be allowed to the appellants. Both sides are at liberty to produce necessary evidences. All issues are kept open. The appeal is disposed of by way of remand."

3. I observe that both the Lower Authorities have ignored the observations and directions of Tribunal and have kept beating about the bush that the documents were not produced in the earlier instance before the Adjudicating Authority and hence, they are not satisfied with the fact and submission of the appellant assessee that the goods had been received back from the job workers within the stipulated period of 180 days as recorded in the "job worker register" as discussed in the Tribunal's Order in detail. The details of the movement of the inputs to the Job worker and back is reproduced in the table below:-

SI No. of Challan under which the goods were sent to the job worker	Description of goods	Name of the job worker & job worker challan No., if any	Date of Return
180 dt. 16-07-2007	Drive gear box assly., spring, buffers.-Total 31 nos.	Invotech Engineers-213 dt. 20-09-2007	20-09-2007
294 dt. 14-09-2007	Angus Motors holding bkt.-1 No.	Agni Motors-10-11-2007	17-11-2007
387 dt. 29-11-2007	Double coated sugar enamel wire-Total 501.99 kg	3rd Harmonics Dt, 17-01-2008	17-01-2008

4. I find that there is no specific document prescribed under 4 (5) (a) under Cenvat Credit Rules, 2004.

I observe that according to Rule 4(5)(a) of Cenvat Credit Rules, 2004, Cenvat Credit shall be allowed even in cases where processed goods are sent to the job worker for further processing if it is established from the records, challans or memos or any other document produced by the manufacturer taking credit that the goods after processing were received back in the factory within 180 days from the job worker's end.

5. In view of the above discussion, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefits to the appellant.

(Dictated and pronounced in the open Court)

Sd/-
(P. K. Choudhary)
Member (Judicial)

Pooja