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

REGIONAL BENCH – COURT NO.2

Excise Miscellaneous Application (EH) No.75756 of 2019
&
Excise Appeal No.76844 of 2018

(Arising out of Order-in-Appeal No.43/CE/RKL-GST/2018 dated 19.03.2018 passed by Commr. of CGST & Excise (Appeals), Bhubaneswar)

M/s OCL India Ltd.
Cement Unit, At/P.O.-Rajgangpur, Dist.-Sundergarh, Pin.-770017, Odisha

Appellant

VERSUS

CGST & Excise, Rourkela
Rourkela I Division, Naya Bazar, Rourkela-769010

Respondent

Appearance:
Shri Abhishek Gupta, C.A. for the Appellant
Shri A.K.Biswas, Authorized Representative for the Respondent

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER

MISC.ORDER NO.75025/2020
FINAL ORDER NO.75039/2020

DATE OF HEARING : 07.01.2020
DATE OF DECISION : 07.01.2020

PER P.K.CHOUDHARY :

The Miscellaneous Application has been filed for out of turn hearing of the appeal by the appellant. The Ld.C.A. appearing on behalf of the appellant/applicant, submits that the reason for filing of this Miscellaneous Application is that the issue is recurring in nature and they have been served show-cause notice for the subsequent period. Accordingly, he prays for out of turn hearing of their case. The Ld.D.R. for the Revenue, has no objection to their prayer. Accordingly, the prayer for out of turn hearing is allowed. With the consent of both sides, the appeal itself is taken up for hearing since the issue lies in a narrow compass.

2. The only issue in dispute is regarding wrong availment of cenvat credit on HDPE/PP Bags used for packing of their final product, i.e. cement, destroyed in the course of packing.

3. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of cement and cleared their product, cement, from their factory of manufacture in duly packed condition in standard package of 50 kg. each. For the purpose of packing of cement in standard packages of 50 kg. each, the appellant has purchased HDPE/PP Bags on payment of duty from the manufacturers of packing bags. It is submitted that the proper records are being maintained with regard to the opening balance, receipt, issue of packing bags for packing, consumption of bags for packing, bursting occurred during the process of packing and the closing balance on daily basis in the erstwhile prescribed format RG-9 (Packing Bags Records). A show-cause notice dated 30th May, 2016 was issued during the period May, 2011 to December, 2015, alleging wrong availment and utilization of cenvat credit amounting to Rs.6,40,926/- on bursted HDPE Bags destroyed in the course of packing, which were not used in or in relation to the manufacture of final product. The adjudicating authority confirmed the demand along with applicable interest and also imposed penalty of an equal amount under Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The lower appellate authority upheld the adjudication order and rejected the appeal before him. Hence, the present appeal before the Tribunal.

4. The Ld.C.A. appearing on behalf of the Appellant Company, submits that the appellants have availed cenvat credit on HDPE/PP Bags received in their factory in good condition and not on burst HDPE/PP Bags as alleged. It is his submission that the burst bags were never destroyed as alleged and were issued for use in the process of packing of cement, which is incidental or ancillary to manufacture. The Ld.C.A. further made the Bench go through the visual presentation explaining the process of packing of cement for standard packages of 50 kg . each in the Roto Packing Machine and while conveying the packed cement through conveyor belt to the truck/railway wagons for dispatch, the packed bags do get damaged/burst. The reason for damage/bursting is that the cement is packed with the aid of high pressure automatic rotary packing machine, which uses compressed air for such filling of

cement in the packing bags and in the said process due to high pressure, some bags get torn or burst during packing operation. One reason attributable for such damage is also high temperature of cement when packed, pressure of the compressed air, mechanical operating faults, disrupted electrical supply etc.. The Ld.C.A. further submits that the burst/torn are duly accounted for in the RG-9 Register maintained by the appellant. He relied on the decision of the Tribunal in the case of Madras Cements Ltd. Vs. Commissioner of Central Excise, Trichy reported in 2010 (259) ELT 137 (Tri.-Chennai).

5. The Ld.D.R. appearing on behalf of Revenue, justified the impugned order and submitted that the cenvat credit has rightly been denied and there is no merit in the appeal filed by the appellant.

6. Heard both sides and perused the appeal records.

7. I find that the claim of the appellant in respect of packing bags being destroyed in the process of packing and getting torn, is a routine feature and on going through the series of pictures filed along with the appeal paper book, it is observed that owing to various reasons i.e. use of high pressure, automatic rotary machine, which is used under compressor for packing cement in the packing bags and due to high pressure, some bags got torn/brust. Even, the temperature of the cement when it is being packing , is very high and the entire movement of the cement upto loading into the truck and wagons is automatic, which also results in damage of the cement bags in the process. I further observe that the issue is no more *res integra* and is covered by the decision of the Tribunal in the case of Madras Cement Ltd. (supra). The relevant paragraphs are reproduced below :

> "***2.*** *The learned consultant Shri Parthasarathy submits that the appellants were using bags for packing cement, on which they take input duty credit. He states that in case the bags are found defective, these are returned to the suppliers and credit in respect of such defective bags is reversed. However, some bags get*

damaged at the time of packing cement as has been recorded in the order of the lower appellate authority. The issue in this appeal relates to such bags which get damaged in the course of packing of cement. He states that such bags are sold as scrap as they cannot be used for packing of cement. He further states that only when inputs are cleared as such, there is a requirement for reversal of the credit under Rule 3(5) of the CENVAT Credit Rules, 2004 but there is no such provision in respect of inputs which have become waste and scrap in the course of manufacture or use as packing materials. He further states that in the appellant's own case, a similar issue has been decided in favour of the appellants vide Final Order No. 691/10 dated 22-6-2010 in Appeal No. E/583/2009.

3. *Heard the learned SDR Shri Niranjan Babu. He supports the impugned order and states that there is a requirement for reversal of credit in respect of such bags cleared by the appellants in terms of Rule 3(5) of the CENVAT Credit Rules, 2004. He also apprehends that unless the credit is directed to be reversed, the appellants may misuse the provision.*

4. *After considering the submissions from both sides, I find that the requirement under the cited Rule 3(5) of the CENVAT Credit Rules, 2004 only applies to input or capital goods cleared as such. There is also a provision for capital goods cleared as waste and scrap but no such provision has been made under the rules to deal with inputs becoming waste and scrap in the course of manufacture or in the course of use as packing material. In the absence of any legal requirement to reverse credit in such cases, the appellants cannot be asked to reverse the credit taken on the inputs which they have put to use for the intended purpose but which have become torn and non-useable in the course of manufacture/use as packing material.*

> ***5.*** *Following the ratio of the decision of the Tribunal are cited above, the impugned order is set aside and both the appeals are allowed."*

8. In view of the above discussions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit, if any in accordance with law.

Dictated and pronounced in the open Court.

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

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