IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

APPEAL NO: E/87882/2013

[Arising out of Order-in-Appeal No: PVR/237/NGP/2013 dated 23rd April 2013 passed by the Commissioner of Central Excise & Customs (Appeals), Nagpur.]

Ramakrishna Electricals Limited …***Appellant***

versus

Commissioner of Central Excise
Nagpur …***Respondent***

Appearance:

Ms. Anjali Hirawat, Advocate for appellant

Shri H M Dixit, Assistant Commissioner (AR) for respondent

CORAM:

Hon'ble Shri C J Mathew, Member (Technical)

Date of hearing: 13/07/2017
Date of decision: 13/07/2017

ORDER NO: A/92312 / 2017

The appellant M/s Ramakrishna Electricals Limited is aggrieved by order-in-appeal no. PVR/237/NGP/2013 dated 23rd April 2013 of Commissioner of Central Excise & Customs (Appeals), Nagpur, in which duty liability of ₹ 3,28,369/- arising from denial of CENVAT credit under rule 14 of the CENVAT Credit Rules, 2004 read with section 11A of the Central Excise Act, 1944, interest thereon and penalty of like amount under rule 15 of Central Excise Rules, read with section 11AC of Central Excise Act, 1944 for the period from December 2006 to May 2009 has been fastened on them. The appellant supplies transformers on short-term basis to their customers who may send back the purchased goods for reconditioning and repair and are thereafter removed under cover of excise invoice issued as per rule 11 of Central Excise Rules, 2002. On return of goods to the appellant the duty liability discharged at the time of clearance is taken as CENVAT credit to which jurisdictional authorities have raised objections leading to the proceedings culminating in the present appeal.

2. Heard Learned Counsel for appellant and Learned Authorised Representative. It is seen from the impugned order, which is reiterated by the Learned Authorised Representative, that the finding to the detriment of the appellant is based on presumption that 'appellant has twisted rule 16 to suite his convenience' and that these transformers returned from customers are not inputs or goods brought for repair or reconditioning and, hence, not eligible for availment of CENVAT credit. The first appellate authority has gone on to observe

> *'The wordings used in Rule 16 of Central Excise Rules, 2002 'for any other reason' can not be stretched to defeat the very purpose of intention of the said Rule. The said rule is a enabling provision to receive the goods, for repair purpose. Where as in the present case goods are being received after temporary use by their clients and the same is not covered*

under Rule 16 of Central Excise Rules, 2002,

3. It would appear from the findings in the impugned order that a wrong construction has been placed on the object and intention of rule 16 of Central Excise Rules, 2002. Liability to pay duty arises on manufactured goods on removal from the factory of manufacturer. There is no exemption to any category of goods except under an exemption notification. However, it is not the intention of the statute that goods once taxed should be subject to repeated duty liability on every incident of removal. It is to provide a mechanism for such removal without repeating the duty burden that rule 16 of Central Excise Rules, 2002 carves a separate facility of adjustment of duty that is levied in the first instance. Rule 16 is of such latitude that it covers, besides repairs and reconditioning, any other purpose. The expression in the statute cannot be allowed to be circumscribed on an unfounded interpretation by lower authorities to restrict this latitude. Accordingly, the findings of the first appellate authority is not based on law.

4. In consequence, the disallowance of CENVAT credit and the recovery thereof are without the authority of law for which reason the impugned order is set aside and the appeal allowed.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

**/as*