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

Appeal No. E/1378/2010

(Arising out of Order-in-Appeal No. VSK/677/Th-I/2010 dated 26.03.2010 passed by Commissioner of Central Excise (Appeals), Mumbai)

Smita Steel Rolling Mills Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Thane I **Respondent**

Appearance:

Shri Mehul Jivani, C.A. for appellant
Shri N.N. Prabhudesai, Supdt. (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing & Decision : 04.07.2018

FINAL ORDER NO...A/86972/2018

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 26.03.2010 passed by the Commissioner (Appeals), Central Excise, Mumbai.

2. Brief facts of the case are that the appellant is engaged in the manufacture of rolled products of iron and steel, falling under Chapter 72 of the Central Excise Tariff Act, 1985. The appellant manufactures the said goods by itself as well as

through the contractor on job work basis. For both type of manufacturing activities, the appellant avails CENVAT credit of Central Excise duty paid on inputs and capital goods. Since the goods removed from the factory to the jobworker did not suffer any duty and were cleared without payment of duty, the department contended that the appellant was liable to pay the amount as per the provisions of sub-rule 3 of Rule 6 of the Cenvat Credit Rules, 2004. Accordingly, show cause proceedings were initiated against the appellant, seeking for recovery of the wrongly availed CENVAT credit. The show-cause notice dated 27.04.2007 was adjudicated vide order dated 05.06.2008, wherein the proposals made therein were dropped. Feeling aggrieved with the adjudication order, Revenue has filed appeal before the learned Commissioner (Appeals), which was disposed of vide impugned order dated 26.03.2010. By relying on the decision of the Larger Bench of Tribunal, in the case of *M/s Sterlite Industries (I) Ltd. - 2005 (183) ELT 353 (Tri. LB)*, learned Commissioner (Appeals) has held that the jobwork clearances made by the principal manufacturer cannot be treated as exempted goods, since duty is finally discharged on the products by the principal manufacturer. However, he allowed the department’s appeal, holding that the products manufactured on jobwork basis are not the final product of the appellant and the particulars of the jobworked goods have not been reflected by the appellant in the periodic returns.

3. Learned Consultant appearing for the appellant, at the outset, submits that the impugned order has travelled beyond the scope of the show-cause notice inasmuch as, whether the goods manufactured on jobwork basis should be considered as final product or not, was never the subject matter of dispute in the show-cause notice. Thus, he submits that since the matter was adjudicated beyond the proposals made in the show-cause notice, the impugned order is not sustainable on this ground alone. To support such stand, learned Consultant has relied on the decisions of this Tribunal in the following cases:-

(a) Orient Paper Mills – 2016 (343) ELT 916 (Tri. – Del)
(b) Empire Industries Ltd. – 2016 (344) ELT 395 (Tri. – Mum)
(c) White House Cotton Industries Ltd. – 2008 (226) ELT 418 (Tri. Chennai)
(d) Suzuki Powertrain India Ltd. – 2017 (49) STR 299 (Tri. – Del)

4. On the other hand, learned D.R. appearing for the Revenue reiterates the finding recorded in the impugned order.

5. Heard both sides and perused the records.

6. I find that the show-cause notice had sought to deny the CENVAT credit on the ground that since the goods were sent for job work under exemption Notification No.214/86 C.E dated

25.03.1986, the said goods should be considered as exempted goods, as per the provisions of Clause (d) of Rule 2 of the Cenvat Credit Rules, 2004. Whereas, on going through the findings of the learned Commissioner (Appeals), I find that he has proceeded against the appellant on the ground that the goods manufactured on jobwork basis are not the final product of the appellant. Since such observations recorded in the impugned order were not the subject matter of dispute in the show-cause notice, seeking for denial of Cenvat benefit, I am of the considered view that the impugned order passed entirely on new ground cannot stand for judicial scrutiny.

7. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

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