IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT No. I

APPEAL No. E/1489/2010

(Arising out of Order-in-Original No. 16/CEX/Commr/2010 dated 15.4.2010 passed by Commissioner of Central Excise, Customs & Service Tax, Aurangabad)

Commissioner of Central Excise, Aurangabad **Appellant**

Vs.

Crompton Greaves Ltd. **Respondent**

Appearance:

Shri A.B. Kulgod, Assistant Commissioner (AR), for appellant
Ms. Padmavati Patil, Advocate, for respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)
Hon'ble Mr. Sanjiv Srivastava, Member (Technical)

Date of Hearing: 12.10.2018
Date of Decision: 12.10.2018

ORDER No. **A/87644/2018**

Per: Sanjiv Srivastava

This appeal has been filed by the department against the order of Commissioner Central Excise Aurangabad dated 15.04.2010 dropping the demand of duty and vacating the seizure in respect of goods seized.

2.1 Respondents are manufacturers of the Electrical Motors falling under CETH 85030029, 85015110, 85015210 and 85015310. They were operating as an

100% Export Oriented Unit (EOU). They are having another unit in the adjacent premises engaged in manufacture Electrical Motors, AC Generators & AC Drives falling under CETH 85013119, 85013210, 85013310, 85013410, 85015110, 85015210, 85015310 & 52044010. The unit in adjacent premises is a domestic tariff area unit.

2.2 Respondent vide letter dated 16.06.2007 intimated to the development Commissioner regarding exit from EOU scheme in terms of Para 6.18(e) of the Foreign Trade Policy, 2004-09. They discharged the duty liability arising on account of de-bonding activities of EOU and obtained "No Dues" Certificate on 21.08.2007. There after all manufacturing activities in the unit were stopped and ER-2 returns showing nil production and clearance filed.

2.3 During the visit of preventive officers on 14.07.2008, it was observed that the manufacturing activities were on in the unit. On enquiry it was intimated that these manufacturing activities were being undertaken on behalf of the adjacent DTA unit. Since the unit was not in position to show the final de bonding order, investigations were initiated against them holding the manufacturing activities in contravention of various provisions of Custom Act, 1962.

2.4 The goods being manufactured in the EOU unit premises, actually belonged to adjacent DTA unit and they were utilizing the infrastructure available for production of their export goods. No records were being maintained by the EOU unit or DTA unit to cover the movement of raw material & finished goods.

2.5 On reasonable belief that goods available in the premises of EOU unit were liable for confiscation, they were seized under a proper panchnama. The seized goods were provisionally released after execution of bond and bank guarantee for the same.

2.6 In terms of para 6.8 of EXIM policy 2004-09 an EOU requires specific permission from the Development Commissioner for clearance of the goods to domestic tariff area. They have not applied or got the said permission to effect DTA sales. They had fraudulently manipulated the records to give an impression that goods being manufactured and cleared from EOU were actual production of DTA unit in adjacent premises. During the periods April 2008 to 14.07.2008 they had manufactured and cleared 4500 electric motors valued at Rs. 5,83,45,205/- to their DTA without obtaining the permission from Development Commissioner. The said 4500 electric motors cleared by the EOU to their DTA unit without payment of duty were also liable for confiscation. However since these goods were not available as already cleared by the DTA.

2.7 A show cause notice dated 25.11.2008 was issued to the respondents proposing the confiscation of the seized goods and demanding duty on 520 electric motor collectively valued a Rs 64,45,839/- cleared by EOU to DTA unit. Demand was also made on the respondents DTA unit in respect of the inputs removed by them to the EOU for use in the manufacture was also made. Levy of interest and penalty was also proposed.

2.8 Matter was adjudicated by the Commissioner, who held relying ion the decision of the tribunal in case of Sterlite Optical Technologies Ltd [2005 (188) ELT 210 (T Mum)] held that date of debonding is the date of order of final debonding. However taking note of the facts as follows:

a) the department had given a no due certificate to the assessee. As such, department was aware that the assessee was in process of debonding.

b) The debonding order of the Development Commissioner came after 13 months of the application.

c) The Central Excise Officers had done sealing of export consignments & were therefore aware of the place & manner of manufacturing as also the export documents of the consignments.

And the fact that there is no dispute with regards to actual export of the goods manufactured and cleared by the EOU unit to DTA unit, the demand of duty is just a technical demand and the violations are procedural in nature. Thus he dropped all the demands and vacated the seizure. He imposed penalty of Rs 25,000/- on EOU unit under Rule 25(1) of the Central Excise Rules, 2002 and penalty of Rs 5000/- on DTA unit under Rule 15A of CENVAT Credit Rules, 2004.

3.1 The order of Commissioner has been challenged in appeal by the department on following grounds:-

a) The learned Commissioner found that the main aspect governing the case is the debonding of EOU without receiving the debonding certificate from the designated authority.

b) the main reason for dropping has been explained in para 19.4 of the order. He has held that the assessee could not keep the plant and machinery idle. Even though undoubtedly goods have been manufactured in the EOU premises, without debonding order of development Commissioner, procedural violations have taken place.

In view of above, the learned Commissioner has erred in assessing the circumstances of the case and dropped the proceeding without assigning proper legal reasoning.

4.1 We have heard Shri A B Kulgod, Assistant Commissioner, Authorized Representative for the revenue, who reiterated the grounds taken in appeal.

4.2 We also heard Ms Padmavati Patil, Advocate for the respondents.

5.1 We have considered all the submissions. From the appeal memo and ground of appeals mentioned in the said appeal memo the only ground urged is *"In view of above, the learned Commissioner has erred in assessing the circumstances of the case and dropped the proceeding without assigning proper legal reasoning."* We are at loss to understand which circumstances were has been erroneously assessed by the Commissioner while dropping the demand. The review committee having two Chief Commissioner could have done a better job if they could have at least pointed out a single circumstance which has been wrongly assessed by the Commissioner in his order dropping the demand. The manner in which this appeal has been filed appears to be very mechanical without application of mind to the case. Nothing atleast appears to be mentioned in the appeal memo or review order.

5.2 Since no substantial ground has been put forth challenging the order of the Commissioner we do not find any merits in the appeal filed by the revenue.

6.0 Appeal filed by the revenue is dismissed as unsubstantiated.

(Pronounced in court)

(Archana Wadhwa)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

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