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

Appeal No. E/207/11

(Arising out of Order-in-Original No. 04/Commr/Goa/CX/2010-11 dated 28.10.2010 passed by the Commissioner of Customs & Central Excise, Goa).

M/s Andrew Telecommunications India Pvt. Ltd.	Appellant

Vs.

Commissioner of Central Excise, Goa	Respondent

Appearance:

Shri R.P. Jindal, Advocate	for Appellant
Shri A.B. Kulgod, AC (AR)	for Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

Date of Hearing: 28.11.2018

Date of Decision: 28.11.2018

ORDER NO. **A/88201 / 2018**

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Original No. 04/Commr/Goa/CX/2010-11 dated 28.10.2010 passed by the Commissioner of Customs & Central Excise, Goa.

2. Briefly stated the facts of the case are that the appellants are engaged in manufacture of Telecommunication accessories, cables, cable assembly, antenna, cable scrap, copper scrap, core

scrap, aluminium scrap, brass scrap, lumps scrap etc. During the relevant period, the appellant cleared excisable goods to their depot on payment of appropriate Central Excise duty @ 14.42% as applicable. Later, the said goods were brought back to their factory and CENVAT Credit on the amount of duty paid, at the time of clearance, was availed by them. The said finished excisable goods were thereafter again cleared by the appellant on payment of duty @ 10.30% during the period from 9.12.2008 to 12.3.2009 instead of reversing the actual credit availed at the time of its receipt from the depot. Consequently, a demand notice was issued to them for recovery of the differential duty amounting to Rs.72,63,234/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty; the amounts of duty and interest paid were appropriated. Hence, the present appeal.

3. Learned Advocate for the appellant has submitted that it is not clear from the notice as to whether duty short paid was demanded or the credit equivalent to that availed at the time of return of the goods from the depot was directed to be recovered. It is his contention that in absence of recovery mechanism, the differential excess credit availed cannot be recovered. Further, he has submitted that the appellant had cleared their own manufactured excisable goods against excise invoices, therefore, imposition of penalty equivalent to the duty is unwarranted and hence liable to be set aside.

4. Per contra, the learned AR for the Revenue has submitted that the appellant had initially cleared the goods on payment of duty at the prevalent rate during relevant time. Consequently,

when the goods were received, they availed CENVAT Credit of the duty paid. Since the appellant had not carried out any process on the returned goods, which resulted into manufacture, therefore, they were required to reverse CENVAT Credit availed on return of the goods. Therefore, the demand is correctly confirmed by the adjudicating authority and since they have violated the provisions of Rule 16(2), therefore, penalty equal to the amount of wrong credit availed is justified.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal for the determination is whether on clearance of the 'returned goods' received under Rule 16(1) of the Central Excise Rules, 2002, it is required to reverse the amount of credit availed on the quantum of duty initially paid or the rate of duty prevalent on the date of clearance of the returned goods. For easy understanding, the relevant Rule 16 is reproduced below: -

> ***RULE 16. Credit of duty on goods brought to the factory. —***
>
> *(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.*
>
> *(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.*
>
> *[**Explanation.** - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.]*

> *(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the [Principal Commissioner or Commissioner, as the case may be].*

On a plain reading of the aforesaid rule, it is clear that when the 'returned goods' are subjected to process, which does not result into manufacture, the manufacturer shall pay an amount equal to the CENVAT Credit taken under sub-rule (1) of the said rules.

6.1 In the present case, no evidence has been brought on record that the returned goods were subjected to process amounting to manufacture, therefore, the appellant is required to reverse the credit availed on the returned goods, at the time of its initial clearance from the factory. Thus, we do not find any discrepancy in the impugned order in confirming the demand of differential credit and interest. However, as far as penalty is concerned, we find that the appellant could make out a case that the returned excisable goods were cleared second time from the factory on payment of duty, at lower rate, and demand notice has been issued for normal period. Besides, the appellant had discharged the differential duty with interest. In these circumstances, imposition of penalty equivalent to duty/credit, in our opinion is unwarranted. Consequently, the penalty is set aside and the appeal is partly allowed to the said extent.

(Operative portion of the order pronounced in Court)

(S. Srivastava)
Member (Technical)

(Dr. D.M. Misra)
Member (Judicial)

Sinha