CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Miscellaneous Application No. 85753 of 2022
(On behalf of Appellant)
In
Excise Appeal No. 1462 of 2012

(Arising out of Order-in-Appeal No. PIII/MMD/161/2012 dated 02.07.2012 passed by the Commissioner of Central Excise (Appeals), Pune-III .)

M/s. Groz-Beckert Carding India Private Limited ....Appellant
(Formerly M/s. Bekaert Carding Solutions Pvt. Ltd.)
Gat No. 1087, Plot No. 5, Sanaswadi,
Taluka – Shirur, Dist. - Pune,
Maharashtra – 412 208

VERSUS

Commissioner of Central Excise, Pune-III ....Respondent
ICE House, 41-A, Sassoon Road,
Opposite Wadia College,
Pune – 411 001.

APPERANCE:

Shri Sanjeev Nair, Advocate for the Appellant

Shri Bhilegaonkar Deepak, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86125 / 2022

Date of Hearing: 14.10.2022
Date of Decision: 14.10.2022

PER: DR. SUVENDU KUMAR PATI

Denial of CENVAT Credit of Rs.20,19,263/- for the period between 2004 and 2010 availed on the basis of supplementary invoices issued by job worker to the manufacturer/Appellant is assailed in this appeal.

2. Factual backdrop of the case, in brief, is that Appellant is a manufacturer of card clothing who partially process the goods through its job worker Unirub Techno India Pvt. Ltd. (Unirub). Inadvertently, the job worker failed to disclose the manufacturing value of the goods provided by the Appellant in the assessable value of goods manufactured by it and cleared to the Appellant but after the same being pointed out to the job worker by the Departmental Auditor through audit objection made during the course of Department Audit of Unirub, it was promptly complied and differential duty alongwith interest before the issue of show-cause notice was paid on 04.02.2010. Audit objection concerning the issue was closed then, without any further allegation or issue of show-cause notice to the job worker Unirub. It issued supplementary invoices to the Appellant for the differential duty paid by it against which Appellant availed CENVAT Credits but subsequently received show-cause notice dated 23.02.2011 for availing the CENVAT Credit of Rs.20,19,263/- against the tax paid through the supplementary invoice in contravention of Rule 9(1)(b) of CENVAT Credit Rules, 2004. Matter was adjudicated upon that resulted in confirmation of duty demand etc. and Appellant's unsuccessful attempt before the Commissioner (Appeals) in getting the desired relief has brought the dispute to this forum.

3. During the course of hearing of appeal learned Counsel for the Appellant Mr. Sanjeev Nair submitted that no contravention of Rule

9(1)(b) of CENVAT Credit Rules, 2004 was made as the same rule permits availment of credit issued through supplementary invoice and the only restriction available in such the said Rule is that such CENVAT Credit cannot be availed against a supplementary invoice in cases where additional amount of duty becomes recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful mis-statement or suppression of facts or contravention of any provisions of the Excise Act or of the Customs Act or the Rules made thereunder with intent to evade payment of duty and in the instant case no such incident was noticeable against the manufacturer nor even against the job worker who had mistakenly failed to discharge certain duty liability and duly complied the same upon being brought to its notice by the Respondent-Department through its audit report. Further, in submitting judicial decisions in the case of *CCE, Vapi vs. Castrol (I) Ltd.* reported in *2008 (231) ELT 175 (Tri. Ahmd.), Kirloskar Ferrous Industries Ltd. vs. Commissioner of CT & CEx.* reported in *2021 (48) G.S.T.L. 261 (Tri. Bang.), Parasrampuria Synthetics Ltd. vs. CCE, Jaipur* reported in *2005 (191) ELT 899, Bajaj Auto Ltd. vs. CCE, Pune - Final Order No. A/1587 to 1589/WZB/06-C-II(EB), CCE vs. Pawan Ispat Udyog* reported in *2007 (213) ELT 134 (CESTAT),* learned Counsel for the Appellant argued that in all such cases CENVAT Credit was allowed to the manufacturer and more importantly CBEC Circular No. 766/82/2003-CX dated 15.12.2003 has clarified that CENVAT Credit should not be denied to the manufacturer as long as *bonafide* nature of consignees transaction is not doubted, for which order passed by the Commissioner (Appeals) is unsustainable in law and facts.

4. In response to such submissions learned Authorised Representative for the Respondent-Department Mr. Bhilegaonkar Deepak argued in favour of reasoning and rationality of the order passed by the Commissioner (Appeals) and has drawn attention of this Bench to para 8, 9 & 10 of the Order-in-Appeal where clear observation is made by the Commissioner (Appeals) that once fixation of lower assessable value was made by M/s Unirub that led to short payment of duty, the claim that the said credits were taken in good faith is unsustainable for which despite placing reliance on various case laws, the Appellant is not entitled to avail such CENVAT Credit as short-levy has arisen on account of suppression of facts and mis-declaration with an intention to evade payment of duty for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. We have gone through the submissions and perused the case record. As could be noticed there was no show-cause notice issued to the Appellant’s job worker on the allegation of fraud, wilful mis-statement, or of suppression of facts so as to cover the supplementary invoices within the proviso contained in Rule 9(1)(b) of the CENVAT Credit Rules, 2004 for which we are of the considered view that Appellant is entitled to avail the credits on supplementary invoices. Hence the order.

THE ORDER

6. The appeal is allowed and the order passed by the Commissioner of Central Excise (Appeals), Pune-III vide Order-in-Appeal No. PIII/MMD/161/2012 dated 02.07.2012 is hereby set aside with consequential relief to the Appellant.

7. The name of the Applicant has been changed from Bekaert Carding Solutions Private Limited to Groz-Beckert Carding India Private Limited and to give effect to it miscellaneous application that has been filed is also allowed.

(Operative portion of the order pronounced in Court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad