CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 85604 of 2013

(Arising out of Order-in-Appeal No. BR/340/Th-I/2012 dated 26.11.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-I)

M/s. VE Commercial Vehicles Ltd. **Appellant**
S.V. Road, Kolshet, Thane 400 607.

Vs.

Commissioner of Central Excise, Thane-I **Respondent**
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

Appearance:

Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates, for the Appellant
Shri Deepak Bhilegaonkar, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 02.03.2023
Date of Decision: 02.03.2023

FINAL ORDER NO. 85803/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against the order in appeal No BR/ 340/TH-I/2012 dated 26.11.2012. By the impugned order following has been held:

"04. I have carefully considered the grounds of the appeal, written submissions made by the appellants; the oral/written submissions made by Respondent and also relevant provisions of law related to subject matter. The issue involved is Central Excise duty on the scrap generated in the manufacturing process at the job worker's premises should be paid by the principal manufacturer.

05. It is seen that the respondent avails Cenvat credit on various inputs. It is seen from the records (i.e. delivery notes) that they had sent inputs/partially processed inputs for further processing under Rule 4(5)(a) of Cenvat Credit Rules, 2004 to the various *job workers. It appeared that the assessee received only semi finished goods; while scrap generated during the process carried out by the job worker was not returned to the assessee. The assessee vide their letter dated 10.12.2009 had confirmed that the job workers have cleared the scrap without payment of duty after availing benefit of SSI exemption. The 'scrap' generated during the process of manufacture of the final product was excisable goods classifiable under Chapter Heading 7204 1000 of Central Excise Tariff Act, 1985, which was a final product within the meaning of definition of Rule 2(h) of Cenvat Credit Rules, 2004 read with Section 2(d) of Central Excise Act, 1944. Therefore the assessee was liable to pay duty on such scrap irrespective of whether it was generated within its own factory or within the factory premises of the job worker working under Rule 4(5) of Cenvat Credit Rules, 2004. Value of scrap for arriving at the value and calculating the Central Excise duty payable is considered as Rs. 18/- per Kg. on basis of statement dated 19.04.2010 of Shri K. O. Johnson, authorized signatory of the respondent, recorded under Section 14 of Central Excise Act, 1944, whereunder he had deposed that processing cost is finalized based on quotes and commercial negotiation with the vendor and they assumed the scrap recovery by vendors based on prevalent scrap price and scrap is accommodated.*

06. Cenvat credit scheme permits credit on the basic premise contained in Rule 6 (1) of Cenvat Credit Rules, 2004 the duty would be paid on the final product. Where inputs are removed as such, an amount equal to the credit taken is required to be paid under Rule 3(5) of Cenvat credit Rules, 2004. Where the inputs are used in the manufacturing process, all the resultant products satisfying the description of one of the entries in Central Excise Tariff, 1985 are subjected to assessment of duty. Where any of the final products is exempted or chargeable to nil duty, under Rule 6of Cenvat Credit Rules, 2004 credit of inputs is not allowed. In all situations liability to pay The scheme does not allow the duty remains on the respondent. manufacturer to part with the material and yet retain the credit. Availment of credit is linked to the payment of duty on the final product. manufacturer who retains the credit also retains the liability to pay duty.

07. The scrap generated at the job workers premises is itself the final product, which is subject to assessment of duty. The assessee was required to get back the scrap from their job worker, account the same and clear on payment of duty. In this case the liability to pay duty lie on the manufacturer who had taken credit on the inputs. Further, Rule 4(6) of Cenvat Credit Rules, 2004 permits manufacturer of the final products who has sent the inputs or partially processed inputs outside his factory to a job worker, to clear the goods from the premises of the job worker subject to conditions laid down by the jurisdictional A.C./D.C..

08. The facility of removal of inputs without payment of duty under Rule 4(5) of Cenvat Credit Rules, 2004 is subject to condition that the duty on the final products is charged by the manufacturer who had availed the credit. Normally the goods should be brought back to the manufacturer's premises and should be subjected to assessment at the time of removal. The exception contained in Rule 4(6) merely avoids bringing the goods to the manufacturers premises, it does not extinguish the duty liability of the manufacturer. There is nothing in the rules to indicate that the scrap arising at the job workers premises should not be brought back or that duty would not be payable on such scrap. Liability to duty does not ceases merely by not bringing the goods or scrap back to the manufacturer's premises.

09. Whereas 'scrap' generated during the processing of inputs of the respondent, at job worker's factory premises is excisable goods classifiable under Chapter sub-heading 72041000 of Central Excise Tariff Act, 1985, which is a final product within the meaning of the definition of Rule 2(h) of Cenvat Credit Rules, 2004read with Section 2 (d) of Central Excise Act, 1944. Therefore, it appears that the respondent is liable to pay duty on such scrap irrespective of whether it was generated within its own factory or within the factory premises of the job worker working under Rule 4(5) Cenvat Credit Rules, 2004.

10. The scrap generated during the processing of inputs send under Rule 4(5) of Cenvat Credit Rules, 2004, at the job worker's premises was required to be returned to the principal *manufacturer within 180 days from the date of sending the inputs. The principal manufacturer could adopt the provisions of Rule 4(6) and clear the scrap directly from the job worker's premises on payment of duty. Levy of the Central Excise duty arises as soon as the scrap generated and the due date for the payment of duty is the date of removal of the same.*

11. It is seen from the statements dated 04.11.2009 and 19.04.2010 of Shri K. O. Johnson, Authorized signatory that the price of the scrap was adjusted in the amount charged by the job worker for carrying out the job work. Thus, in the exchange of the scrap, the respondent had received a consideration in By this arrangement respondent form of reduction in job charges. transferred/sold the scrap to the job worker. Retention of the scrap by the job to the worker for a consideration constituted delivery of the scrap manufacturer by the job worker on the sale basis. This itself amounts to 'removal' of scrap by the manufacturer without payment of duty.

12. It is seen that the quantum and the price of such scrap are neither mentioned at the time of price negotiation with the job worker nor the respondent disclosed the same in their monthly returns i.e. ER-1 filed under Rule 12 of Central Excise Rules, 2002. They did not furnish these details either in their ER-1 Returns or any other statements filed with the department. They have deliberately suppressed the facts for the department about the disposal of the scrap by above mode of clearance / sale from the job worker's premises without payment of duty. The respondent have not brought the scrap in his factory and simultaneously have not paid duty on the scrap. This fact came to know to the department at the time of scrutiny of the records of the respondent, otherwise it would have remained suppressed from the department. Hence, in the Show Cause Notice the proviso to Section 11A (1) of Central Excise Act, 1944 is invokable, the interest under Section 11AB of Central Excise Act, 1944 and penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC of Central Excise Act, 1944 is also imposable on the assessee. In view of the foregoing, the case laws referred by the respondent will not come to their help as the same are not relevant.

13. On the facts and grounds mentioned above the order passed by the lower authority dropping the proceedings is not legal and proper. I therefore, allow the Revenues appeal and accordingly pass order.

ORDER

I allow the Revenues appeal and set aside the impugned order of the lower authority and confirm the demand as set out in the Show Cause Notice under Section 11A of Central Excise Act, 1944 alongwith equal penalty under Rule 25 of Central Excise Rules, 2002 read with Section 11AC, and with interest under Section 11AB of Central Excise Act, 1944."

2.0 We have heard Shri Rajesh Ostwal with Shri Saurabh Bhise, Advocates for the appellant and Shri Bhilegaonkar Deepak, Additional Commissioner, Authorized Representative for the revenue.

3.0 Issue involved in the present case is no longer res integra.

3.1 Rocket Engineering Corporation Ltd. Vs. CCE - 2005 (191) ELT 483 (T.),

"Duty demand of Rs. 43,679/- has been confirmed and penalty of equal amount has been imposed upon the appellants herein on the ground that the scrap generated at job workers premises during the course of manufacture of inputs for the reason that they did not get back the waste and scrap, which had arisen in the job workers premises to whom castings were sent by the appellants for the manufacture of IC engines parts, as per the provisions of Rule 4(5)(a) of the Cenvat Credit Rules, 2002. The period in dispute is April 2002 to August 2002.

2. I heard both sides and found force in the submission of the appellants that Rule 4(5)(a) of the Cenvat Credit Rules, 2002 does not cover the return of waste and scraps. This interpretation has been put by the Tribunal, upon the provisions of this rule, in the case of Preetam Enterprises v. Commissioner of Central Excise, Pune-II [2004 (173) E.L.T. 26 (Tri.-Mum.)].

3 In view of the above decision, I see no merits in the contention of the ld. DR that the Rule 4(5)(a) of the Cenvat Credit Rules 2002 would also require that waste and scrap *should be returned from the job workers to the factory of the principal manufacturer. Accordingly, I set aside the impugned order and allow the appeal."*

3.2 Affirming this decision Hon'ble Bombay High Court has as reported at [2008 (223) ELT 347 (Bom.)] held that

"2. Learned Counsel appearing for the appellant contends that following substantial question of law arises for consideration of this Court. -

A. "Whether the assessee i.e. the supplier of inputs to the job worker is liable to pay Central Excise Duty on the scrap generated at the job workers end, which is not received back from the job workers within the specified time in terms of Notification No. 214/86-C.E., dated 25-3-1986 as amended r/w Rule 4(5)(a) of Cenvat Credit Rules?"

B. "Whether scrap generated at the job workers end out of the processing of the inputs is required to be returned to the supplier and, if it is not returned back whether the supplier of inputs is required to pay appropriate Central Excise thereon?"

3. Having heard rival parties and having examined the findings recorded in the order in original, it is not in dispute, that the assessee had paid duty on the scrap generated at the factory of the job worker for the period April 1999 to March 2000. There is no liability on the principal manufacturer-respondent after 31st March 2000 in view of amended Rule 57AC of the Cenvat Credit Rules. In view of this finding of fact, no substantial question of law arises in this appeal. Appeal is, therefore, dismissed in limine with no order as to costs."

3.3 In Rocket Engineering Corporation Ltd. [2006 (193) ELT 33 (T.)], Tribunal held:

"11. The appellants contend that the Commissioner (Appeals) failed to appreciate the vital fact that nowhere in Rule 57AC(5)(a)/Rule 4(5)(a) of the Cenvat Credit Rules, there is any provision made to compel the principal manufacturer to bring back the scrap generated at the job workers' end or to pay the Central Excise duty on the said scrap.

12. The Central Excise duty cannot be demanded from the appellants since the job worker is the manufacturer of the said scrap, which is retained by him and sold in the market.

13. The similar issue is answered in the case of M/s. International Tobacco Co. Ltd. v. CCE, Ghaziabad [2004 (165) E.L.T. 314 (Tri.-Del.)]. It is observed that no process of manufacturing taking place in respect of waste and scrap generated during the course of manufacture of cigarettes. Moreover, provision for dutiability of waste and scrap existed only in the erstwhile Central Excise Rules, 1944 (Rule 57F) and no such provision is there in the Cenvat Credit Rules, 2001. Duty is not leviable under Section 3 of the Central Excise Act, 1944."

3.4 In the case of M/s. International Tobacco Co. Ltd. [2004 (165) E.L.T. 314 (Tri.-Del.)], tribunal held:

"4. *We have considered the submissions of both the sides. There is force in the submissions of the learned Advocate that no process of manufacture has been taken by them so as to attract the Central Excise duty on such waste of the paper arising during the course of manufacture of the cigarettes. The Revenue has not controverted the contention of the learned Advocate for the appellants that there is no provisions in Cenvat Credit Rules, 2001 providing for payment of duty on waste and scrap, which has arisen during the manufacture of the finished product. Such a provision had existed in the erstwhile Rule 57F of the Central Excise Rules, 1944. In view of this, the impugned order is not sustainable. Accordingly, we set aside the order and allow the appeal."*

3.5 Similar view has been expressed in the following cases:

i. International Tobacco Co. Ltd. [2004 (165) ELT 314 (T.)];
ii. Preetam Enterprises [2004 (173) ELT 26 (T.)];
iii. Emco Ltd. [2008 (223) ELT 613 (T.)];
iv. Alucast Foundries Pvt. Ltd. [2009 (236) ELT 301 (T.)];
v. FAG Engineering (I) Ltd. [2011 (266) ELT 193 (T.)[;
vi. Mahindra Hinoday Industries Ltd. [2013 (292) ELT 456 (T.)];

vii. Voltamp Transformer Ltd. [2014 (302) ELT 586 (T.)];

viii. National Engineering Ind. Ltd. [2015 (323) ELT 205 (T.)[;

ix. Voltamp Transformers Ltd. [2015 (329) ELT 380 (T.)];

x. National Engineering Ind. Ltd. Vs. CCE - 2017 (346) ELT 390 (T.);

xi. Amforge Industries Ltd. Vs. CCE – 2021 (375) ELT 358 (T.);

xii. Lanxess India Pvt. Ltd. Vs. CCE - 2022 (380) ELT 616 (T.).

3.6 Vide Final Order No. A/86109/2018 dated 20.3.2018 reported at 2018 (5) TMI 1050 -CESTAT MUMBAI, in case of the sister unit of the appellant tribunal held that the appellants were not liable to discharge duty on waste and scrap generated at job worker's end.

3.7 We do not find any merits in the impugned order.

4.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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