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

Excise Appeal No. 85688 of 2013

(Arising out of Order-in-Original No. 08/ANS-08/John Galt/Th-I/2012 dated 20.12.2012 passed by the Commissioner of Central Excise, Thane-I)

John Galt International **Appellant**
Plot No. A/36, F-32, W-7/6/5,
MIDC Industrial Estate,
Kulgaon, Badlapur,
Dist. Thane 421 503.

Vs.

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

Appearance:

Ms. Padmavati Patil, Advocate, for the Appellant
Shri Sunil Kumar Katiyar, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 03.03.2023
Date of Decision: 03.03.2023

FINAL ORDER NO. 85725/2023

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Original No. 08/ANS-08/John Galt/Th-I/2012 dated 20.12.2012 passed by the Commissioner of Central Excise, Thane-I, holding as follows:-

"ORDER

(i) I confirm the demand for Cenvat credit amounting to Rs.59,79,635/-(Rs. Fifty nine lakhs seventy nine thousands six hundred thirty five only) availed wrongly by M/s. John Galt International and order recovery of the same from them under Rule 14 of the Cenvat Credit Rules 2004 read with Section 11A of the Central Excise Act, 1944.

(ii) I order recovery of interest at appropriate rate on the confirmed duty amount under (1) above under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11AB of the Central Excise Act, 1944.

(iii) I impose penalty of Rs. Rs.59,79,635/-(Rs. Fifty nine lakhs seventy nine thousands six hundred thirty five only) on M/s. John Galt International under Rule 15 of Cenvat Credit Rule 2004 read with Section 11AC of the Central Excise Act 1944."

2.1 Appellant is engaged in manufacture of excisable goods and also vailing the benefit of Cenvat credit.

2.2 They are clearing goods both on payment of duty and also by availing exemption benefit under Notification No. 64/95-CE. A show cause notice dated 01.11.2010 was issued to the appellant demanding Cenvat credit reversal in respect of the goods cleared to the Defence established in terms of Rule 6(3)(1) of the Cenvat Credit Rules for the period 01.10.2005 to 30.09.2010. The said show cause notice has been adjudicated as per the impugned order. Hence this appeal.

3.1 We have heard Ms. Padmavati Patil, Advocate for the appellant and Shri Sunil Kumar Katiyar, Assistant Commissioner, Authorised Representative for the Revenue.

3.2 It is undisputed fact that the appellant has maintained separate account for the goods cleared under exemption on payment of duty. These were very minor inputs like welding gas, welding electrodes, paints etc. which were common to both the goods and they had reversed the credit in respect of common inputs amounting to Rs.2,80,488/- on 30.08.2012 vide entry No.161 in their Cenvat account along with interest of Rs.1,84,166/-. The fact that they have not taken any credit in respect of the major inputs used for manufacture of goods cleared under exemption has been certified by Chartered Accountant (certificate dated 28.02.2012) and Chartered Engineer (certificate dated 29.02.2012).

3.3 It is now settled law that the appellant should have been allowed the benefit of proportionate reversal in respect of the common inputs, even if there were certain procedural violations.

5.1 In view of above, we do not find merit in the impugned order and set aside the same.

5.2 Appeal is allowed in favour of appellant.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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