CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87642 OF 2013

[Arising out of Order-in-Appeal No: BR/170/Th-I/2013 dated 26th March 2013passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

VE Commercial Vehicle Ltd
SV Road, Chitalsar, Manpada, Thane (West) - 400607 … ***Appellant***

versus

Commissioner of Central Excise
Thane – I
Navprabhat Chambers, Ranade Road
Dadar West, Mumbai - 400028 ***…Respondent***

APPEARANCE:

Shri Gajendra Jain, Advocate with Shri Saurav Bhise, Advocate for the appellant
Shri P K Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A / 86339/2023

DATE OF HEARING: 09/05/2023
DATE OF DECISION: 05/09/2023

PER: C J MATHEW

The appellant, M/s VE Commercial Vehicles Ltd – a manufacturer of ‘motor vehicles’ and ‘parts’ – is before us with the grievance that Commissioner of Central Excise (Appeals), Mumbai – I, in impugned order[1], upheld the common adjudicating order confirming recovery of ₹ 36,38,930 demanded in three notices issued for the period from September 2010 to March 2012 despite two orders of the Tribunal having held that duty liability did not arise on the ‘waste and scrap’ generated at the facility of the ‘job worker’ contracted by them.

2. According to Learned Counsel for that appellant, the Tribunal had been called upon to intervene when a claim for refund of ₹ 20,19,820, discharged erroneously as ‘duties of central excise’ for the period from January 2007 to December 2007 on ‘waste and scrap’ generated by their ‘job-worker’, had been wrongfully withheld by the lower authorities and the order dated 7th January 2016 gives no room for doubt. As they had stopped discharging liability on such, notice for recovery of duties on such ‘waste and scrap’ for the period from 1st January 2008 to August 2010, though issued, came to be dropped in adjudication proceedings before the Additional Commissioner of Central Excise who relied upon the decision of the Hon’ble High Court of Bombay in *Commissioner of Central Excise v. Rocket Engineering Corporation Ltd [2008 (223) ELT 347 (Bom)]*. On appeal preferred, on behalf of the jurisdictional Commissioner of Central

[1] [order-in-appeal no. BR/170/Th-I/2013 dated 26th March 2013]

Excise, that decision was reversed and, in addition, penalty was imposed under rule 25 of Central Excise Rules, 2002. On their appeal, the Tribunal decided in their favour thus settling the issue.

3. Learned Counsel for appellant submitted that ‘job worker’ was engaged to undertake processing on inputs or partially processed inputs which are returned for final processing at their end. He further submitted that ‘waste and scrap’ so generated were sold by the ‘jobworker’ and, in the mistaken belief of such being liable to duty, payment was duly effected only till 1st January 2008 and stoppage thereafter intimated to the central excise authorities. He informed that the refund dispute pertained to that period while the dispute on recovery related to the period thereafter and, having been carried to the Tribunal, was also in their favour.

4. Learned Counsel for appellant not only relied upon the decision in *re Rocket Engineering Corporation Ltd* but also the disposal of their appeal[2] in final order[3] dated 2nd March 2023 against order[4] of Commissioner of Central Excise (Appeals), Mumbai-I for the period from 31st January 2008 to 31st August 2008.

5. We have heard Learned Authorized Representative.

6. The order of the Tribunal in their own appeal pertains to the

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[2] [E/85604/2013]
[3] [final order no. A/85803/2023-EX]
[4] [order-in-appeal no. BR/340/Th-I/2012 dated 26th November 2012]

immediate preceding period wherein it has been held that

'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.'

in identical circumstances for the earlier period.

7. Accordingly, the order impugned before us does not survive which is set aside to allow the appeal.

(Order pronounced in the open court on 05/09/2023)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)