# CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

## WEST ZONAL BENCH

## EXCISE APPEAL NO: 85307 OF 2015

[Arising out of Order-in-Original No: 15/COMMR/M-II/KCG/2014-15 dated nil October 2014 passed by the Commissioner of Central Excise, Mumbai – II.]

**Morgan Constructions Co India Pvt Ltd**
130 Pandurang Budhkhar Marg, Worli
Mumbai - 400018 … ***Appellant***

*versus*

**Commissioner of Central Excise**
**Mumbai – II**
4th Floor, Vardaan Trade Centre, MIDC, Wagle Estate
Thane (West) - 400604 ***…Respondent***

*APPEARANCE:*

Shri Rajesh Ostwal, Advocate for the appellant

Shri Vinod S Chettiparambil, Assistant Commissioner (AR) for the respondent

**CORAM:**

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

**FINAL ORDER NO: 85648/2024**

DATE OF HEARING: 01/04/2024
DATE OF DECISION: 01/04/2024

*PER: C J MATHEW*

The limited issue in this appeal of M/s Morgan Constructions Co India Pvt Ltd against confirmation of demand of ₹ 84,71,596/-

under section 11A of Central Excise Act, 1944, along with interest thereon under section 11AA of Central Excise Act, 1944, and imposition of penalty of like amount under section 11AC of Central Excise Act, 1944 is the second demand of duty liability despite having discharged the same on the clearance of impugned goods as such.

2. According to Learned Counsel for the appellant, order[1] of Commissioner of Central Excise had demanded duty on inputs that had been procured indigenously as well as from abroad on payment of appropriate duties of central excise and customs respectively on the ground that credit had been availed in accordance with CENVAT Credit Rules, 2004 that had not been utilised in manufacture of goods or for rendering of service. It is contended by him that all inputs, upon receipt in factory, had been recorded and, in the event of non-use in the manufacture of final products but removed as such, duties not less than credit taken on receipt in the factory had been discharged. It is further submitted that the monthly, as well as annual returns, did include such clearances of inputs under the heading of 'sales of manufacture, clearance and duty payable' despite which show cause notice had been issued to them proposing reversal of credit for non-disclosure in the relevant monthly returns; in addition, reversal of credit effected for the period from April 2009 to September 2009 had been considered as payment of duty on finished goods cleared by them.

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[1] [order-in-original no. 15/COMMR/M-II/KCG/2014-15 dated nil October 2014]

3. We have heard Learned Authorized Representative at length.

4. The dispute lies within the narrow compass of the claim of the appellant that they had reversed the credit taken on inputs cleared as such without being deployed in the manufacture of final products not having been accepted by the adjudicating authority. It would appear that even after obtaining report from the divisional office, the adjudicating authority was not satisfied that the credit taken and reversed were correlated. The entire issue revolves around the report from the field formation which was, apparently, ignored by the original authority. To us, verification of availment of credit and reversal of credit on inputs that were cleared as such is the simple enough process that should have been undertaken by the original authority, before deciding upon the show cause notice. In the absence of discharge of that responsibility by the adjudicating authority, we are unable to dispose of this appeal on merits. Accordingly, we set aside the impugned order and remand the matter back to the original authority for carrying out the necessary verifications and disposing off the show cause notice on the basis of such ascertainment.

*(Operative part of the order pronounced in the open court on 1st April 2024)*

**(AJAY SHARMA)**
***Member (Judicial)***

**(C J MATHEW)**
***Member (Technical)***

**/as*