(2020) 12 CESTAT CK 0051

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 76350 Of 2019

M/s Anmol Stainless Pvt. Limited @Hash Commr. Of CGST And Excise, Howrah

Date of Decision : 17-12-2020

Acts Referred:

Central Excise Rules, 2002 — Rule 16
Central Excise Act, 1994 — Section 3, 3(2), 4, 4A

Citation : (2020) 12 CESTAT CK 0051

Hon'ble Judges : P. K. Choudhary, J

Bench : Single Bench

Advocate : Ankit Kanodia, S.S.Chattopadhyay

Final Decision : Allowed

Judgement

1. The appellant assessee is in appeal against the Order-in-Appeal dated 05/03/2019 for confirmation of demand of Rs.3,66,578/- as irregular Cenvat

credit availed under Rule 16 of the Central Excise Rules, 2002 during the period 2013-14 and 2014-15 along with applicable interest and equal amount

of penalty.

2. Briefly stated, the facts of the case are that the appellant, M/s.Anmol Stainless Private Limited, is engaged in the business of manufacture of cold

rolling of thick stainless sheets, slitting in small sizes, making stainless pipes etc. classifiable under Chapter No. 73049000 of the First Schedule to the

Central Excise Tariff Act, 1985.

3. Based on an EA 2000 audit of the excise and service tax records of the Appellant for the period from 2012-13 to 2014-15, a Show cause notice

dated 15/12/2016 was issued alleging irregular availment of Cenvat credit to the tune of Rs.3,66,578/- along with interest and penalty. It is the case of

the department that the Appellant had availed Cenvat credit on goods returned by its customers under Rule 16 of the Central Excise Rules, 2002

without proper documents and only on the basis of the tax invoice issued by the Appellant itself. It was also alleged that since the amount paid by the

Appellant as excise duty was actually on trading of goods as the process of cutting, slitting and polishing on imported China pipes couldnâ??t be a

manufacturing process, hence the amount paid as excise duty cannot be treated as â??Central Excise Dutyâ?? in terms of section 3 of the said Act

and hence availment of Cenvat credit of goods returned by customers under Rule 16 of the Central Excise Rules, 2002 is liable to be recovered. The

lower authorities have confirmed the demand as proposed in the SCN and imposed equivalent penalty. Hence, the present appeal before the Tribunal.

4. The Ld. Chartered Accountant appearing for the appellant submitted that the only objection in the instant SCN is regarding the documents based on

which the Appellant has availed the Cenvat credit under Rule 16 of the Central Excise Rules, 2002 for the goods which were returned by the

customers. He further states that all the goods were duty paid goods and thus as per Rule 16 of the Central Excise Rules, 2002, if duty paid goods are

returned for remake and are again cleared after payment of excise duty, then the Appellant is eligible to avail Cenvat credit of the said returned goods

on its own invoice also. The Appellant further stated that though in an earlier proceeding for the same period wherein vide SCN dated 01/04/2015, the

department had demanded reversal of entire Cenvat credit availed by the Appellant on the imported China pipes on the ground that the process

undertaken by the Appellant on such pipes does not amount to manufacture under Central excise and thus the Appellant had reversed the total Cenvat

credit availed on such China pipes by way of payment of excise duty and balance by way of reversal from the credit ledger of the Appellant. The

Cenvat credit availed by the Appellant on the goods retuned would not require further reversal as the Appellant had again paid excise duty on the said

removal of the goods. The appellant has also produced a statement showing the resale of the retuned goods after making payment of excise duty for

the same.

5. The Ld. Chartered Accountant also stated that the Appellantâ??s own invoice is also a valid document for availment of Cenvat credit and relied

on the Tribunalâ??s decision in the case of BALMER LAWRIE & CO. LTD. Vs

COMMISSIONER OF CENTRAL EXCISE, MUMBAI 2016

(343) E.L.T. 1175 (Tri. - Mumbai) to substantiate its claim. The Appellant also relied on the following decisions :

a. BERICAP INDIA PVT. LTD. Vs COMMISSIONER OF CENTRAL EXCISE, PUNE-I 2018 (363) E.L.T. 1078 (Tri. - Mumbai)

b. COMMISSIONER OF CENTRAL EXCISE, THANE-I Vs ACME SPECIALITIES 2018 (363) E.L.T. 894 (Tri. - Mumbai)

c. HEAT SHRINK TECHNOLOGIES LTD. Vs COMMISSIONER OF C. EX., MUMBAI-IV 2017 (347) E.L.T. 512 (Tri. - Mumbai)

6. He further stated that the current proceedings have been initiated by invoking extended period of limitation whereas the knowledge of the activities

of the Appellant were well known to the department as it had already issued a SCN for recovery of Cenvat credit on imported China pipes in 2015

itself and hence the extended period cannot be invoked in the current case at all.

7. The learned Authorized Representative for the Revenue, on the other hand, justified the impugned orders.

8. Heard both sides through video conferencing and perused the appeal records.

9. The short issue that arise for consideration in the instant appeal is with respect to whether the Appellant is liable to reverse the amount of Cenvat

credit on the duty paid goods retuned by its customers on the cover of its own invoice or not. I find that the Appellant has produced copies of its tax

invoice, credit note as well as buyerâ??s debit note for return of the said duty paid goods by its customers (page 111-112 of the appeal paper book).

From the same it is clear that the Appellant had sold goods after payment of excise duty to itâ??s customers and when the same are returned for any

reason, the Appellant is entitled to Cenvat credit of the same subject to conditions of Rule 16 of the Central Excise Rules, 2002, which are reproduced

for ready reference as below:

â??Rule 16 of Central Excise Rules, 2002- (1) Where any goods on which duty had been paid at the time of removal thereof are brought to

any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his

records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit

Rules, 2002 and utilise this credit according to the said rules. (2) If the process, to which the goods are subjected before being removed

does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any

other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the

value determined under sub-section (2) of Section 3 or Section 4 or Section 4A of the Act, as the case may be. Explanation. - The amount

paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods. (3) If there

is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being remade, refined,

re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the

Commissioner.â??

10. From the plain reading of the above Rule 16, it can be seen that though under Cenvat credit Rules, Cenvat credit is allowed only on input but under

special provision of Rule 16, the Cenvat credit is allowed even on the finished goods on the condition that at the time of re-issue of such finished

goods, the assessee is required to pay appropriate excise duty. In the present case, there is no dispute on payment of duty on the re-issue of the goods

on which credit was taken. Therefore, in terms of Rule 16, the Appellant is entitled for the credit. Further, the issue is no more res â?" integra. The

Tribunal in the case of BALMER LAWRIE & CO. LTD supra has held â-? ?From the plain reading of the above Rule, it clearly provides that

on the duty paid goods brought in the factory, the assessee can avail the Cenvat credit as if there is receipt of input. Rule does not prohibit

taking credit on the assesseeâ??s own invoices. The appellant own invoice in present case is duty paid invoice therefore, whether the

invoice is of appellantâ??s own or issued by person returns the goods back, it is one and the same. It is immaterial who has issued invoice

but important is whether invoice is duty paid invoice. Therefore, irrespective of fact where the invoices are of appellant or otherwise if duty

paid goods is brought in the factory of the assessee credit can be allowed. As regard the contention of the show cause notice as well as

adjudication order that the procedure has not been followed, on-going through the aforesaid Rule 16, I find that no procedure is

prescribed for taking credit on the returned goods, therefore, only requirement is duty paid goods should be brought in the factory and

same should be recorded in their books and at the time of re-issue of such repaired/reprocessed goods proper duty has to be paid

therefore, no procedure such as making application or taking permission is required for compliance of Rule 16. Therefore, in my view

Cenvat credit availed on the returned goods is allowable. I therefore, modify the impugned order and allow the appeal of the appellant.â??

11. Thus having regard to the above noted judgment, it is clear that the Appellant can avail the Cenvat credit of the duty paid goods and since there is

no dispute in the present case that the goods were not duty paid goods. The demand for recovery of Cenvat credit fails. Further, it is also on record

that the Appellantâ??s activities were known to the department since inception as earlier also a SCN dated 01/04/2015 was served on the Appellants

for recovery of Cenvat credit availed on imported china pipes which were cleared after payment of duty. Thus, the current proceedings being on the

same foot by treating amount paid by the Appellant as not excise duty, cannot be sustained by invoking extended period of limitation as the department

was very much having knowledge of the entire proceedings since inception. Thus, the demand cannot sustain on limitation ground as well.

12. The appeal is allowed in the above terms with consequential benefits, if any.

(Pronounced in the open court on 17.12.2020)

