
(2023) 07 CESTAT CK 0028

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 42080, 42081, 42082 Of 2016, 40485 Of 2018

M/s. Emerson Process Management Chennai P.Ltd

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 17-07-2023

Acts Referred:

CENVAT Credit Rules, 2002 — Rule 6, 6(6), 9(1)(b)

Citation : (2023) 07 CESTAT CK 0028

Hon'ble Judges : Sulekha Beevi C.S., Member (J); Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : S. Adithya, Harendra Singh Pal

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellants are engaged in the manufacture of Industrial valves, Gaskets, etc. and are registered with the Central Excise Department. They are availing cenvat credit on inputs, capital goods and input services and utilizing the credit for payment of Central Excise duty. During the course of verification of accounts for the different periods, it was noticed that the appellant had manufactured and supplied control valves to Mega Power Projects without payment of Excise Duty under Notification No.6/2006- CE dt. 1.3.2006 as amended. During the manufacture of control valves three sub-assemblies namely (a) Body Assembly (b) Actuator Assembly and (c) Digital Valve Controller emerge . On perusal of the sales invoices, it was revealed that the said sub-assemblies are cleared as Plug/ Stem assembly, FSDVC, Positioner Assembly etc. It was clear that the said sub-assemblies are intermediate goods having distinct name, tariff classification, known to the market as goods, and having marketability for being bought and sold. It was noticed that some of the sub-assemblies were also cleared as such without payment of duty under Notification No.6/2006-CE, apart from clearing sub-assemblies without payment of duty

which were captively consumed for the manufacture of the final products. It appeared to the department that the benefit of Notification 67/95-CE dt. 16.03.1995 is not available to the appellants as the final products are exempted from the whole of duty of excise. Show cause notice was issued for the different periods proposing to demand duty along with interest and also for imposing penalties. After due process of law, the original authority confirmed the duty, interest and imposed penalty. On appeal, Commissioner (Appeals) upheld the same. Appeal Nos.E/42080-42082/2016 are filed by appellant against such orders.

2. The appellant had availed credit of the duty paid pursuant to the confirmation of demand by the original authority. The department was of the view that, the credit is not eligible on the duty which is paid / recovered from the manufacturer on account of short levy due to willful misstatement, suppression of facts with intention to evade payment of duty. Show cause notice was issued for the period July 2015 proposing to deny the credit availed and to recover the same along with interest and for imposing penalty. After due process of law, the original authority confirmed the demand, interest and imposed penalty. On appeal, the Commissioner upheld the same. Hence the Appeal E/40485/2018.

3. Ld. Consultant Shri S. Adithya appeared and argued for the appellant. It is submitted by the Ld. Consultant that the excise duty is not payable on the intermediate goods as it is covered by clause (vi) of the proviso to Notification 67/95-CE read with clause (vi) of Rule 6 (6) of Cenvat Credit Rules, 2004, as the final product is supplied against the international competitive bidding. The relevant proviso to Notification 67/95 reads as under :

"Provided that nothing contained in this notification shall apply to inputs used in or in relation to the manufacture of final products which are exempt from the whole of the duty of excise or additional duty of excise leviable thereon or are chargeable to nil rate of duty, other than those goods which are cleared.

(i) to a unit in a Free Trade Zone, or

(ii) to a hundred percent Export Oriented Undertaking or

(iii) to a unit in an Electronic Hardware echnology Park, or

(iv) to a unit in a Software Technology Park, or

(v) under notification No.108/95-Central Excise dated the 28th August, 1995 or

(vi) by a manufacturers of dutiable and exempted final products, after discharging the obligation prescribed in rule 6 of the CENVAT Credit Rules, 2001.

4. Rule 6 of CCR 2004 broadly covers the obligation of a manufacturer who is manufacturing both dutiable and exempted goods or providing taxable as well as exempted services and at the same time uses or consumes the common inputs and input services. The notification 67/95-CE dated 1.6.3.95 provides for exemption of goods manufactured in factory and used within the factory in

relation to the manufacture of final products. However the proviso in the notification provides that this exemption shall not be available if the final products are exempted from the whole of duty of excise leviable thereon. It further goes on to add an exception to this proviso wherein if the final products are cleared under one of the categories provided therein, the captively consumed goods shall still enjoy the exemption despite the final product being exempt. Appellant is covered under clause (vi) of proviso as they are a manufacturer of both dutiable and exempted final products who have discharged the obligation prescribed in Rule 6 of CCR 2004.

5. As per rule 6 (6) of CCR 2004 the obligation of reversing cenvat credit is not applicable in a case where goods are being supplied against International Competitive Bidding. In the present case, the goods have been supplied against the international competitive bidding and hence there is no obligation under Rule 6(6) of CCR 2004. The appellant is covered under clause (vi) to the proviso under Notification 67/95-CE dt. 16.03.1995. Thus, there is no liability to pay duty on the intermediate products.

6. Ld. Consultant submitted that in the appellant's own case for subsequent period, the Tribunal vide Final Order No.42658/2018 dt.23.10.2018 for the period July 2014 to December 2014 and Final Order No.42763/2018 dt. 31.10.2018 which covers the period October 2015 to September 2016 has held that the appellant is not liable to pay duty on the intermediate products. The Tribunal therein had followed the decision in the case of Bharat Aluminium Co. Ltd. Vs CCE Raipur - 2017 (345) ELT 685 (Tri.-Del.), Thermo Cables Ltd. Vs CCE Hyderabad - 2012 (202) ELT 412 (Tri.-Bang.) and Kei Industries Ltd. Vs CCE Alwar - 2017 (357) ELT 1230 (Tri.-Del.).

7. With regard to denial of cenvat credit for the period July 2015 (Appal E/40485/2018), it is submitted by the Ld. Consultant that pursuant to the OIO dated 28.7.2015 passed by the adjudicating authority confirming the duty demand, the appellant had paid the duty in regard to the intermediate products. The appellant being eligible for credit had availed credit of the duty so paid. Show cause notice has been issued proposing to deny the credit and to demand and recover the amount holding that since the amount of duty on intermediate products has been confirmed invoking the extended period alleging suppression of facts with intent to evade payment of duty; that in terms of Rule 9 (1) (b) of CCR 2004 appellant cannot avail credit. Ld.counsel pointed out that the duty demand for this period in which the credit has been availed is the subject matter of appeal E/42081/2016 March 2013 and April-May 2013 (OIO dt. 30.4.2015). Duty along with penalty paid by the appellant pursuant to this order was Rs.39,85,735/-. Duty having been paid on intermediate goods, the appellant was eligible to avail credit and the same has been denied only for the reason that the extended period has been invoked. The Tribunal in the appellant's own case has held that duty is not payable on intermediate products. On such score as the duty has been paid, the appellant would be eligible for the credit. He prayed that

the appeals may be allowed.

8. *Ld. A.R Sri Harendra Singh Pal* supported the findings in the impugned orders.

9. Heard both sides.

10. The first issue to be decided is whether the appellant is liable to pay duty on intermediate goods. *Ld. Counsel* submitted that they are not liable to pay duty in terms of Notification 67/95-CE read with clause 6 (6) of CCR 2004. Relevant part of Notification 67/95 has already been reproduced above. Provisions of sub-rule 6 of Rule 6 of CCR 2004 read as under :

“(6) The provisions of sub-rules (1) (2), (3) and (4) shall not be applicable in case the excisable goods removed without payment of duty are either –

(i) cleared to a unit in a special economic zone; or to a developer of a special economic zone for their authorized operations; or

(ii) cleared to a hundred per cent, export-oriented undertaking; or

(iii) cleared to a unit in an Electronic Hardware Technology Park or Software Technology Park; or

(iv) supplied to the United Nations or an international organization for their official use or supplied to projects funded by them, on which exemption of duty is available under notification of the Government of India in the Ministry of Finance (Department of Revenue) No.108/95-Central Excise, dated the 28th August, 1995 number G.S.R. 602 (E) dated the 28th August, 1995 or

(v) cleared for export under bond in terms of the provisions of the Central Excise Rules, 2002 or

(vi) gold or silver falling within Chapter 71 of the said First Schedule, arising in the course of manufacture of copper or zinc by smelting; or

(vii) all goods which are exempt from the duties of customs leviable under the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) (5) and the additional duty leviable under sub-section (1) of section 3 of the said Customs Tariff Act when imported into India and are supplied,-

(a) against International Competitive Bidding; or

(b) to a power project from which power supply has been tied up through tariff based competitive bidding; or

(c) to a power project awarded to a developer through tariff based competitive bidding, in terms of notification No.6/2006-Central Excise, dated the 1st March 2006.”

11. The very same issue was decided in the appellant’s own case. The Tribunal after following the decision in the *Bharat Aluminium (supra)*, the decision in *Thermax Cables (supra)* as well as the decision in *Kei Industries (supra)* held that

duty demanded on intermediate products cannot sustain. It is not in dispute that the clearances were made to Mega Power Projects under International Competitive Bidding. Following the decision in the appellant's own case, we hold that the demand confirmed by impugned orders in Appeal Nos.E/40280-40282/2016 cannot sustain and requires to be set aside, which we hereby do.

12. The issue in Appeal E/40485/2018 is denial of cenvat credit for the period July 2015. The appellant had availed credit based on the supplementary invoices issued in a case where duty is paid on the basis of a demand invoking the extended period. Pursuant to confirmation of demand by the adjudicating authority, the appellant had paid Rs.39,85,735/- and availed the credit of the same. The notice has proposed to deny credit in terms of rule 9 (1) (b) of CCR 2004. As we have already set aside the duty demand on the intermediate products the duty, if any. paid would be eligible for credit and the bar under Rule 9 (1) (b) of CCR, 2004 would not be applicable. The credit becomes eligible. The impugned order in E/40485/2018 is therefore set aside.

13. In the result, the appeals are allowed with consequential relief, if any.