(2021) 07 CESTAT CK 0049

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 555 Of 2011

M/s Jai Balaji Industries Limited (Unit IV) APPELLANT

Vs

Commissioner Of Central Excise, Bolpur RESPONDENT

Date of Decision : 27-07-2021

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 72
Cenvat Credit Rules, 2004 — Rule 6(2), 6(3), 6(6), 6(6)(i)
Special Economic Zones Rules, 2006 — Rule 30
Special Economic Zones Act, 2005 — Section 2(m)

Citation : (2021) 07 CESTAT CK 0049

Hon'ble Judges : P. K. Choudhary, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The present appeal is directed against the Order-in-Original dated 18-03-2011 passed by the Commissioner of Central Excise, Bolpur. The Appellant is engaged in the manufacture of iron and steel products of different grades classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985. During the period from April 2007 to December 2008, apart from selling Mild Steel Rounds and TMT Bar to independent buyers etc, they also exported 20457.34 MT of Mild Steel Rounds and TMT Bar to different SEZ developers without payment of duty.

2. A show cause notice dated 13-10-2010 was issued to the Appellant on the ground that the said clearance was in violation of provisions of Rule 6(3) of the Cenvat Credit Rules, 2004 without payment of duty in terms of Rule 30 of Special Economic Zones Rules, 2006, as amended, by issuing ARE-1s under self sealing and self certification with remarks "Export to SEZ". It was alleged that they did not maintain separate accounts for common inputs on which Cenvat credit was availed by them, as required under Rule 6(2) of Cenvat Credit Rules, 2004 for manufacture of dutiable and exempted goods. Hence, they were liable to pay 10% of value of goods cleared without payment of duty to different SEZ

Developers under Rule 6(3) of Cenvat Credit Rules, 2004 but failed to do so. The show cause notice was issued under extended period of limitation. The Appellant contested the said allegations but the Ld. Commissioner confirmed the entire duty demand and imposed equal amount of penalty.

3. The Ld. Advocate appearing for the Appellant submitted that they were following procedure as laid down under CBEC circular No. 29/2006-Cus dated 27-12-2006, which is available at page 70 of the case law compilation book they have submitted to the Bench. The said circular provided that under section 2(m) of the Act, supplying goods or providing services, from DTA to a SEZ unit or a SEZ developer, has been defined to constitute "export". According to the said circular, supply of goods from Domestic Tariff Area to a SEZ Developer or a unit would be governed by the provisions of Rule 30 of the SEZ Rules, 2006 and the movement of goods from the place of manufacture to the SEZ shall be (i) on the basis of ARE-1 (in cases where export entitlements are not availed); (ii) on the basis of ARE-1 and Bill of Export (in cases where export entitlements are availed) and against a general Bond or Letter of Undertaking, specified in Annexure-1 and Annexure-II, under Notification No. 42/2001-C.E (NT) dated 26-6-2001. He took us through copies of the invoices and ARE-1s under which the TMT bars were cleared to different SEZ Developers by following the aforementioned procedure. He also drew our attention to Rule 6(6) of Cenvat Credit Rules, 2004 which during the material period, inter alia, provided that the provisions of Rule 6(3) of Cenvat Credit Rules, 2004 shall not be applicable in case the excisable goods removed without payment of duty to a unit in a special economic zone.

The Ld. Advocate also submitted that rule 6(6)(i), of Cenvat Credit Rules, 2004 was substituted vide Notification No. 50/2008-CE (NT) dated 31-12-2008 wherein instead of the expression "cleared to a unit in a special economic zone" the same was substituted with "cleared to a unit in a special economic zone or to a developer of a special economic zone for their authorized operations". The Ld. Advocate submitted that this amendment by way of substitution of the provision was clarificatory in nature and would have retrospective effect from the date when Cenvat Credit Rules, 2004 came into existence. In support of this submission the Advocate has relied upon the following judgments wherein it has been laid down that the substituted sub rule 6(6)(i) of Cenvat Credit Rules, 2004 is of clarificatory nature, corrects an obvious mistakes and has retrospective effect:

(i) Union of India Vs. Steel Authority of India Ltd reported in 2013-TIOL-384-HC-Chhattisgarh-CX.

(ii) CCE & ST Bangalore Vs. Fosroc Chemicals (India) Pvt Ltd reported in 2015 (318) 240 (Kar).

(iii) Sujana Metal Products Ltd Vs. CCE, Hyderabad reported in 2011 (273) ELT 112 (Tri.Bang).

(iv) Commissioner Vs. Sujana Metal Products Ltd reported in 2016 (342) ELT

A115 (AP).

(v) Principal CCE, Bangalore Vs. Poer Control Equipments (Imot-II) reported in 2016 (336) ELT 284.

(vi) Ultra Tech Cement Ltd Vs. CCE, Tirupati reported in 2014 (310) ELT 170 (Tri.-Bang).

(vii) Commissioner Vs. Ultra Tech Cement Ltd reported in 2015 (317) ELT A200 (AP)

(viii) Surya Roshni Ltd Vs. CCE, Rohtak reported in 2012 (285) ELT 518 (Tri.Del).

(ix) MITC Rolling Mills Vs. CCE, Nashik reported in 2019 (366) ELT 882 (Tri.-Mum).

(x) S.P. Fabricators Ltd Vs. CCE, Belapur reported in 2016 (334) ELT 105 (Tri.-Mum)

The Ld. Advocate also argued that the demand is barred by limitation as they were following procedure as laid down under CBEC circular No. 29/2006-Cus dated 27-12-2006. In support of his submission he has relied upon para 12 of the judgment in the case of Sujana Metal Products Ltd Vs. CCE, Hyderabad reported in 2011 (273) ELT 112 (Tri.Bang) wherein it has been held that as the issues involved relate to interpretations of SEZ provisions under the Customs Act, SEZ Act and provisions of the Central Excise Rules and the Cenvat Credit Rules, no charge of suppression by the assessee can be sustained and therefore, there was no occasion of invoking the extended period of limitation and also imposing penalties. This judgment of the Tribunal has been upheld by the Andhra Pradesh High Court as reported in 2016 (342) ELT A115 (AP).

4. The learned AR for the Revenue reiterated the findings made by the Ld. Commissioner and prayed that the appeal be rejected being devoid of merit.

5. Heard both sides through video conferencing and perused the appeal records in detail.

6. We have gone through the various judgments relied by the learned Advocate. It has been clearly laid down by the Hon'ble Chhatisgarh High Court, Andhra Pradesh High Court, Karnataka High Court and this Tribunal that supplies into by DTA unit have to be treated as export in terms of Section 2(m) of Special Economic Zones Act, 2005. They are neither chargeable to nil rate of duty nor exempt from payment of duty under exemption notification. That anomaly under rule 6 (6)(i) of Cenvat Credit Rules, 2004 was duly removed when the said clause 6(6)(i) of Cenvat Credit Rules, 2004 was substituted and SEZ developers were also treated on the same footing as SEZ units. In the aforementioned judgments which have been relied upon by the learned Advocate it has been clearly laid down that the said substituted rule is clarificatory in nature and, therefore, would have retrospective effect from the date when Cenvat Credit Rules, 2004 were brought into force.

On the issue of limitation, the findings of the Commissioner that invoking extended period is very much within the legal ambit of the department cannot be sustained as the Appellant was duly following procedure as laid down under CBEC circular No. 29/2006-Cus dated 27-12-2006, and such clearances were well within the knowledge of the department. In the case of Sujana Metal Products Ltd Vs. CCE, Hyderabad reported in 2011 (273) ELT 112 (Tri.Bang), which has been upheld by the Hon'ble Andhra Pradesh High Court, this Tribunal apart from setting aside the duty demand on the very same issue on merits also set aside the duty demand on the ground of limitation. In view of the above, the duty demand, demand of interest and imposition of equal amount of penalty is neither sustainable on merits nor on the ground of limitation.

We therefore set aside the impugned Order and allow the appeal with consequential relief as per law.

(Operative part of the order was pronounced in the open Court)

