**(2015) 06 CESTAT CK 0012**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Appeal No. 52041 Of 2014

M/s. Jai Forgings & Stampings Pvt Ltd. APPELLANT

Vs

C.C.E. And S.T. Panchkula RESPONDENT

**Date of Decision :** 26-06-2015

**Acts Referred:**

Central Excise Tariff Act, 1985 — Chapter 72, 73
Cenvat Credit Rules, 2004 — Rule 6(1), 6
Erstwhile Central Excise Rules, 1994 — Rule 57C
Central Excise Act, 1944 — Section 11B

**Citation :** (2015) 06 CESTAT CK 0012

**Hon'ble Judges :** S.K. Mohanty, J

**Bench :** Single Bench

**Advocate :** R. Santhanam, M. S. Negi,

**Final Decision :** Allowed

## Judgement

1. Brief facts of the case are that the appellant is engaged in the manufacturer of steel forgings and steel scrap, falling under Chapter 73 and 72

respectively of the First Schedule to the Central Excise Tariff Act, 1985. The appellant avails cenvat credit of central excise duty paid on the inputs

and capital goods and utilized the same towards payment of Central Excise duty on clearance of the final products from the factory. The appellant

also undertakes job work activities for other manufacturers in terms of Notification No. 214/86-CE dated 25.03.1986. During the disputed period, the

appellant had reversed cenvat credit attributable to the quantity of furnace oil used for manufacture of job worked goods. However, the credit so

reversed was again taken by the appellant on the ground that the same has been wrongly reversed, inasmuch as by utilizing the job worked goods, the

ultimate finished excisable goods were suffered duty in the hand of the principal manufacturer. Taking of re-credit suo moto was denied by the

Central Excise Department on the ground that there was no proper invoice for taking such re-credit and that taking of such re-credit is contrary to the

provisions of Rule 6(1) of the Cenvat Credit Rules, 2004. The Show Cause Proceedings initiated in this regard, culminated in the adjudication order

dated 30.11.2012, wherein cenvat credit of Rs.6,27,324/- was disallowed along with interest and also penalty of Rs.25,000/- was imposed on the

appellant. In appeal, the Ld. Commissioner (Appeals) vide the impugned order dated 27.12.2013 has set aside the penalty imposed on the appellant

and upheld disallowance of suo moto cenvat credit taken by the appellant.

2. Sh. R. Santhanam, the Ld. Advocate appearing for the appellant submitted that taking of re-credit upon realization of mistake that the cenvat credit

was wrongly reversed is permissible under the statute inasmuch as there is no involvement of any unjust enrichment. To support his view that re-credit

is permissible under the facts and circumstances of the case, the Ld. Advocate has relied on the judgment of Honâ??ble Madras High Court in the

case of ICMC Corporation Ltd. vs CESTAT Chennai reported in 2014 (302) ELT 45 Ma.d and also the decision of the Larger Bench of Tribunal in

the case of Sterlite Industries (I) Ltd. vs CCE, Pune reported 2005 (183) ELT 353 (Tri. LB). The Ld. Advocate further submitted that since the

excisable goods manufactured out of job worked goods have suffered Central Excise duty at the manufacturerâ??s end, the embargo created in Rule

6 will have no application for availing the re-credit of duty paid inputs.

3. On the other hand, Sh. M. S. Negi, the Ld. DR appearing for the Respondent reiterated the findings recorded in the impugned order and relied on

the decision of Larger Bench of this Tribunal in the case of BDH Industries Ltd. vs CCE (Appeals) Mumbai, reported in 2008 (229) ELT 364 (Tri.

LB) to justify his stand that suo moto credit is not permissible to the appellant.

4. I have heard the Ld. Counsel for both the sides and perused the records.

5. The authorities below have denied taking of re-credit by the appellant on the ground that no provision exists in the cenvat statue for taking such re-

credit. It is an admitted fact on record that the cenvat credit on furnace oil was wrongly reversed by the appellant, which was re-credited in the

cenvat register upon ascertaining the fact that the finished goods has suffered duty at the principal manufactureâ??s end. Reversal of cenvat credit and taking of such re-credit is only book entries and the appellant demonstrated with the help of documentary evidence that the amount actually

reversed was taken as re-credit. In this case, the embargo created in Rule 6 ibid will not have any application inasmuch as the job worked goods

removed from the factory of the appellant were used by the principal manufacturer for manufacture of excisable goods, on which appropriate central

excise duty liability has been discharged. The larger benches of this Tribunal in the case of Sterlite Industries (I) Ltd. has held that the provisions of

Rule 57C of erstwhile Central Excise Rules, 1994 ( Parimateria to Rule 6 ibid) will not apply to the job worked goods, for further utilization in the

manufacture of final product, which are cleared on payment of duty by the principal manufacture. With regard to taking of suo moto re-credit, the

Honâ??ble Madras High Court in the case of ICMC Corporation Ltd., (supra) have held that there is no impediment if the assessee takes suo moto

credit, as the same is only a book entry and there is no requirement of filing any refund application under Section 11B of Central Excise Act, 1944. In

view of the judgment of Honâ??ble Madras High Court, the ratio laid down by the larger bench in the case of Sterlite Industries (I) Ltd. (supra), will

not be considered for deciding the issue involved in this case.

6. Therefore, I do not find any merits in the impugned order. Accordingly, after setting aside the same, I allow the appeal is favor of the appellant.

(Operative portion of the order pronounced in open court)

 