(2020) 12 CESTAT CK 0041

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 60641 Of 2019

Tata Steel Bsl Ltd. @Hash CCE And ST- Gurgaon-I

Date of Decision : 09-12-2020

Acts Referred:
Central Excise Rules, 2002 — Rule 16, 16(2)

Citation : (2020) 12 CESTAT CK 0041

Hon'ble Judges : Ashok Jindal, J

Bench : Single Bench

Advocate : Rajesh Chibber, Tarun Kumar

Final Decision : Allowed

Judgement

1. The appellant is in appeal against the impugned order wherein the demand has been raised under Rule 16 of Central Excise Rules, 2002 on the

goods which has been rejected and alleged that no process of remake has taken place.

2. The facts of the case are that the appellant was engaged in the manufacturing of â??Precision Tubes of IRON or STEELâ? and selling the goods

on payment of duty. In certain cases, the goods are rejected by the buyer and returned to the appellant. The appellant at the time of returned goods,

availed cenvat credit of duty paid on such goods. Thereafter, the appellant undertook to rectify/re-make the goods for sale, in that process, certain

goods were re-made and cleared on payment of duty. In such goods, where the goods could not be repaired, they were sold as scrap to their sister

unit on payment of duty. The case of the revenue is that in the cases, the goods were cleared as scrap, the appellant is required to pay cenvat credit

availed on such goods at the time of clearance as they have removed the goods as such in terms of Rule 16(2) of Central Excise Rules, 2002.

Therefore, two show cause notices were issued to the appellant and the matter was adjudicated, demand on account of equal amount of cenvat credit

reversal was confirmed alongwith interest and penalty was also imposed. Against the said order, the appellant is before me.

3. The Ld. Counsel for the appellant submits that in this case, it is a fact on record that the appellant has exercised to remake the goods for sale but in

some cases where the goods were not up to the quality mark, they were sold to their sister unit as scrap on payment of duty. Therefore, they have

rightly availed cenvat credit in terms of Rule 16 of Central Excise Rules, 2002 and paid the duty on such clearances. Therefore, they were not

required to reverse the cenvat credit. In alternate, the Ld. Counsel further submits that as they have cleared the goods to their sister unit as scrap, the

whole exercise is of revenue neutral as whatever duty they have to pay themselves are entitled to take cenvat credit of the same. Therefore, the

proceedings against the appellant are not sustainable. In support of this contention, he relied on the following decisions:-

i) Tatyasaheb Kore Wrana SSK Ltd. vs. CCE â?" 2015 (38) STR 575 (Tri.-Mumbai)

ii) Polymer Papers Ltd. vs. CCE â?" 2019 (369) ELT 1369 (Tri. All.)

iii) Anglo French Textiles vs. CCE, - 2018 (360) ELT 1016 (Tri.-Chennai)

4. On the other hand, the Ld. AR supported the impugned order and submits that the appellant has not done any process on the goods which has been

cleared as scrap, therefore, in terms of Rule 16(2) of Central Excise Rules, 2002 they have required to reverse cenvat credit. In support of this

contention, he relied on the decision of this Tribunal in the case of Hindalco Industries Ltd. vs. Commissioner of Central Excise Belapur, 2007 (215)

ELT 547 (Tri. Mumbai), Commissioner of Central Excise, Jaipur vs. RFH. Metal Castings (P) Ltd. â?" 2005 (184) ELT 194 (Tri.-Delhi), Toyota

Kirloskar Motor Pvt. Ltd. vs. Commissioner of Central Excise, L.T.U. Bangalore â?" 2008 (225) ELT 285 (Tri.Bang.) which has been affirmed by

the Honâ??ble Apex Court reported in 2016 (331) ELT A137 (S.C.).

5. Heard the parties and considered the submissions in detail. Paragraph 2 of the show cause notice is relevant to decide the issue in hand, the same is

reproduced herein below:-

â??2. Whereas, the audit of the records of the noticee for the year 2012- 2013 and 2013-14 was conducted on 19.11.2014, 20.11.2014 &

& 05.12.2014 by the internal Audit party of the erstwhile Central Excise Commissionerate, Delhi-III, Gurgaon (Now Central Excise Audit

Commissionerate, Delhi-II), It was observed that the noticee had received back the rejected finished goods from its customers and were

found lying in the backyard of the factory premises as non reparable on cursory physical walk of the factory premises. Further, scrutiny of

the records of the noticee, it was pointed out that the noticee availed Cenvat Credit of the duty on these rejected goods paid at the time of

removal from the factory. On further enquiry, it was observed that these rejected goods were again subjected to the desired processes for

being re-made, re-fined, re-conditioned or for any other reason, and after that these rectified or reconditioned goods were being cleared

on payment of duty. However, in certain cases, such rejected goods which were not subjected to the desired processes for being re-made,

re-fined, re-conditioned or for any other reason, and hence, were scrapped and removed on payment of duty to their unit at Sahibabad in

UP.â??

6. On going through the said allegations, it is clear that the rejected goods were received by the appellant and at the time of receiving the rejected

goods, the appellant took the cenvat credit in terms of Rule 16 of Central Excise Rules, 2002. It is also fact on record that these goods were subject to

re-make and during the process of re-make certain goods were found cannot be re-made and the same were cleared as scrap on payment of duty,

therefore, the provision of Rule 16(2) are not applicable to the facts of this case to allege that the goods were cleared as such. In fact, as per the facts

of the case itself, it is clear that the returned goods were subjected to some process and when they were not found up to the mark were cleared on

payment of duty as scrap. The appellant has correctly paid the duty as scrap at the time of clearances. Accordingly, the case laws relied upon the Ld.

AR are not applicable to the facts of this case.

7. Further, I find that the appellant has cleared these goods to their another unit. Admittedly, whatever duty have been paid, the same are entitled to

cenvat credit to themselves. In that circumstances, I hold that it is a revenue neutral situation. In that circumstances also, the appellant are not

required to pay any differential duty or any amount on account of cenvat credit.

8. In these terms, I do not find any merit in the impugned order, the same is set-aside and the appeal is allowed with consequential relief, if any.

(Dictated & pronounced in the Court)

