(2021) 11 CESTAT CK 0059

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 584 Of 2010

Voltamp Transformers Ltd Vs C.C.E. And S.T.-Vadodara-ii ?

Date of Decision : 16-11-2021

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 4(5)(a), 4(6)
Central Excise Rules, 2002 — Rule 4, 8

Citation : (2021) 11 CESTAT CK 0059

Hon'ble Judges : Ramesh Nair, J;Raju, Technical Member

Bench : Division Bench

Final Decision : Allowed

Judgement

1. This appeal has been filed by the M/s. Voltamp Transformers Ltd against demand of Central Excise duty interest and imposition of penalty. The appellants are engaged in manufacture of transformers. The appellants were sending their inputs namely copper strips, rods, etc on which they had availed Cenvat Credit of duty paid for further process on job work basis to various job workers. The job workers carried out the process of drawing and paper insulation/covering. Thereafter the goods were returned to the appellant on a "weight to weight basis". The arrangement between the appellant and job worker was that the weight of the goods returned should match with the weight of the copper strips, rods etc. sent by the appellant. It was alleged that during the process of job work involving drawing there may be some loss of weight but there will be gain of weight in the product to be returned due to weight of paper insulation/ covering. The SCN alleged that on an average approximately 2% of copper was scraped during the various processes such as drawing, paper insulation/covering etc. Consequently, demand of Central Excise Duty was raised on the estimate quantity of copper which was not returned/ explained by the appellant. Three show cause notices were issued demanding duty, interest and seeking to impose penalty on the appellant.

2. The Learned Counsel for the appellant pointed out that identical proceedings in the appellant's own case have been set aside by order of Commissioner

(Appeals). He pointed out that vide Order-In-Original No. VHDY/Div-IV/AC/10/2019-20 dated 20.03.2020 passed by the Assistant Commissioner, Division-IV, Vadodara-I had confirmed the demand an identical issue however Commissioner Appeal vide Order-In-Appeal No. VAD-EXCUS-01-APP-085-2020-21 Dated 27.08.2020 set aside the said demand. He further pointed out that an appellant's own case the similar demand against the appellant has been set aside by the tribunal.

? 2013-TIOL-629-CESTAT-AHM-Voltamp Transformer Ltd Vs CCE. Vadodara-II

? 2015 (329) ELT (Ti. - Ahmd.) -Voltamp Transformer Ltd Vs CCE. Vadodara-II

? CESTAT Order No. A/11149/2013 Dated 06/09/2013-Voltamp Transformer Ltd Vs CCE. Vadodara-II

? CESTAT Order No. A/12290/2017 Dated 16/08/2017-Voltamp Transformer Ltd Vs CCE. Vadodara-II

? CESTAT Order No. A/11977-11981/2017 Dated 16/08/2017-Voltamp Transformer Ltd Vs CCE. Vadodara-II

3. Learned AR relies on the impugned order.

4. We have considered the rival submissions. We find identical issue has been decided earlier by the tribunal vide order No. A/11149/WZB/AHD/2013 dated 06.09.2013 wherein following have been observed.

"4. Heard rival submissions and perused the case records. So far as the process of manufacture is concerned, there is no dispute that appellant is sending copper strips and rods to the job workers for drawing Into copper wires and certain waste is generated. It is claim that there is about 2% loss in the process of drawing wires either burning loss or physical waste. It is the case of the appellant that under the provisions of Rule 4(5)(a) of CENVAT Credit Rules, 2004, It is not obligatory to bring back the waste and scrap generated at the job worker's end. They have relied upon CESTAT Mumbal's judgment in the case of Mahindra Hinoday Industries Ltd Vs. CCE Pune (supra). In Para 7 of this judgment, following has been held:-

7. A reading of the rule clearly indicates that the Asst. Commissioner can impose conditions in the interest of revenue including the manner in which duty, if leviable, is to be paid. The Commissioner has prescribed the manner in which the duty liability has to be discharged vide Trade Notice 38/02 wherein he has fastened the duty liability on the principal manufacturer rather than on the job worker. The waste and scrap Is generated during the course of the job work and it is the Job worker who is the manufacturer of waste and scrap under the Central Excise Rules, 2002 and the liability to pay duty is on the person who produces or manufacturer any excisable goods in terms of Rule 4 of the said rules and duty liability has to be discharged in the manner provided for in rule 8 of the said rules. The liability to pay excise duty and the manner of payment of

duty are governed by Rules 4 and 8 of the Central Excise Rules. They are not, in any way, altered or changed by the CENVAT Credit Rules, 2004 which deals with allowing of CENVAT Credit. The CENVAT Credit Rules, 2004 does not create any liability to pay excise duty under any of its provisions. It provides for reversal of credit in case the credit has been taken wrongly. Therefore, under rule 4(6) of CENVAT Credit Rules, 2004 only such conditions can be prescribed which are in conformity with Rules 4 and 8 of the Central Excise Rules, 2002 and not conditions which are repugnant or contrary to the provisions of these rules. In Fag Engineering case (supra), it was held that no duty liability can be fastened upon the principal manufacturer in case of non-receipt of goods in terms of rule 4(5)(a) of the CENVAT Credit Rules, 2004 and the only consequence would be reversal of credit availed on the inputs in case goods on which credit has been taken and which has been allowed to be removed for job workd is not brought back within the time period stipulated. The same legal position was held in the case of Rocket Engineering decided by this Tribunal as also by the Hon'ble High Court of Bombay. In the light of these judicial pronouncements, It has to be held that the principle manufacturer who has supplied the inputs as such or partially processed job workers for further processing cannot be fastened with the duty liability on the waste and scrap generated at the job wokers primises and said liability false on the job workers who have actually manufactured the waste and scrap. In case, the department wanted to recover duty on the waste and scra, then the demand should have been raised on job workers as has been held in Alucast Foundries (Supra)

5. Further, In the case of the appellant decided by CESTAT Ahmedabad on 23.01.2013 (2013-TIOL-629-CESTAT-AHM) following has been held:

10. 1 find that both the lower authorities have not accepted this fact and held that the provisions of Rule of 4(5)(a) of CENVAT Credit Rules envisages the receipt of entire goods back from the job workers. In my view, the said findings are not in consonance with the law as has been laid down by the Tribunal in the case of Bharat Radiators Ltd (supra), Vema Metal & Conductors Ltd (supra), Tata Motors Ltd (supra). I find that the judgment of the Tribunal in the case of Tata Motors Ltd (supra) is a Division Bench judgment and they have relied upon the decision in the case of Bharat Radiators Ltd and have recorded in Para 7 the following findings:-

"7. We find that Tribunal in the case of Bharat Radiators (supra) held that the credit cannot be denied in respect of the process loss at the hand of job worker. In view of the above we find as the Revenue has not denied the fact that the quantity which was found short on account of processing hence the demand is not sustainable hence set aside."

11. I also find that Hon'ble High Court of Gujarat in the case of CMC (India) (supra) in para 7 have recorded the following findings:-

"7....Here, there is a concurrent finding of fact by both the authorities and there is no finding by the authorities to the effect that the loss occurred was unreasonable and both the authorities have also verified that the loss claimed by appellant was based on the records and it would not amount to clandestine removal of goods. Even otherwise, there was clear admission that the goods were clandestinely removed. Since this being a finding of fact, we are of the view that no substantial question of law arises out of the order of the CESTAT."

6. In the present case, the loss on account of waste and scrap is only 2% which has not been argued to be unreasonable by the Revenue. It is also not the case of the Revenue that waste and scrap generated has been clandestinely removed or that no waste and scrap is generated at all in the processes undertaken by the Job worker of the appellant. There is also no binding clause in Rule 4(5)(a) of CENVAT Credit Rules, 2004 that any loss of inputs by generation of waste and scrap has to be compensated by reversing equivalent credit taken on the virgin metal. Further, It has been held by co-ordinate Bench in the case of Mahindra Hinoday Industries Ltd. Vs. CCE Pune-I (supra) that demand if any on waste and scrap has to be raised against the manufacturer job worker and not upon the raw material suppler. In view of the above observations, appeal filed by the appellant is allowed."

Relying on the aforesaid decision in tribunal and appellant's own case involving same issue. We find the impugned order cannot be sustained.

4. The appeal is allowed and impugned order is set aside.

(Pronounced in the open court on 16.11.2021)

