IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

WEST ZONAL BENCH AT MUMBAI

COURT NO. IV

Appeal No. E/1473/11

(Arising out of Order-in-Appeal No. PKS/80/BEL/2011 dated 26.7.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III).

For approval and signature:

Hon'ble Shri Anil Choudhary, Member (Judicial)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No

2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes

3. Whether their Lordships wish to see the fair copy of the order? : Seen

4. Whether order is to be circulated to the Departmental authorities? : Yes

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M/s Mukand Ltd.

Appellant

Vs.

Commissioner of Central Excise, Belapur

Respondent

Appearance:

Shri P.V. Patankar, Advocate

for Appellant

Shri Ashutosh Nath, AC (AR)

for Respondent

CORAM:

SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing: 29.10.2014

Date of Decision: 29.10.2014

ORDER NO.

Per: Shri Anil Choudhary

The present appeal filed by the appellant, M/s Mukand Ltd., arises from Order-in-Appeal No. PKS/80/BEL/2011 dated 26.7.2011 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.

2. The issue involved in this appeal is whether CENVAT Credit attributable to the inputs contained in such waste and scraps, which have not been received from job-worker, is required to be reversed or not?

3. The appellant, M/s Mukand Ltd., is engaged in manufacture of excisable goods falling under Chapter 72, 73 and 84 of Central Excise Tariff Act, 1985 and was availing CENVAT Credit on inputs. The appellant was sending semi processed inputs for carrying out the process of drawing, straightening, grinding, pickling, peeling etc. to different job workers (about 15 in numbers). The semi processed inputs after being processed for job-work were returned back to M/s Mukand Ltd. It appeared to Revenue that there were always shortages in quantity of processed inputs received back by Mukand Ltd. The processed inputs were in lesser quantity than the quantity sent for job-work. It appeared that the appellant was not reversing CENVAT Credit attributable to inputs contained in the material not received back (waste and scraps). Accordingly, for the period in dispute 1.12.2009 to 30.9.2010, a show-cause notice dated 24.12.2010 was issued on the allegation that the appellant have not received back the quantity of waste and scrap from the job-workers, which amounts to clearance of the waste and scrap without payment of duty by the job-worker. As the appellant have failed to reverse the proportionate CENVAT Credit attributable on inputs contained in such waste and scrap, it appears to the Revenue that the appellant is liable to pay CENVAT Credit of Rs.1,67,854/- under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11 of the Central Excise Act, for violating the provisions of Rule 4(5)(a) of Cenvat Credit Rules, 2004. Further, the appellant is liable for interest and also penalty was proposed under Rule 15 of Cenvat Credit Rules read with Section 11AC of the Act.

3.1 The appellant contested the show-cause notice by filing reply to the same contending that w.e.f 1.4.2000, the Modvat scheme was replaced with Cenvat scheme, in which there is no provision, which states that the waste and scrap generated should be returned to the factory of the manufacturer of final product. In case the said scrap/waste is not returned, which is returnable, then the manufacturer of final product should pay duty thereon. It was further contended that as required under Rule 4(5)(a) of Cenvat Credit Rules read with Rule 57AC(v) of Central Excise Rules, 1944, the appellant has received back the processed inputs in its factory, within 180 days or any extended period and hence, there was no violation of the any of the provisions of Act and the Rules, as there is no obligation on the appellant to bring back the waste and scrap. It was further

contended that after enactment of new Central Excise Rules w.e.f. 1.4.2000, no such provisions is made requiring principal manufacturer to reverse/pay CENVAT Credit on waste and scrap generated at job-worker□s premises. Further, reliance was placed on the Board's Circular No. B-4/7/2000-TRU dated 3.4.2000. It was further contended that under Rule 4(5)(a) of Cenvat Credit Rules, 2002/2004 inputs/capital goods after being partially processing can be sent to a job-worker for various purposes like, further processing, testing etc. and only condition imposed under the Rule is that the appellant shall satisfy that the processed goods are received back within 180 days. Further, reliance was placed on the ruling in the case of Forbes Aquatech Ltd. Vs. Commissioner of Central Excise, Calicut □ 2008 (230) ELT 629 (Tri-Bang).

3.2 The show-cause notice was adjudicated vide Order-in-Original dated 11.3.2011 observing that there is no material change with respect to the provisions for job-worker in the Rules prior to 1.4.2000 or subsequent to it under the Central Excise Rules, 2000. It was further held that Rule 4(5)(a) of Cenvat Credit Rules also requires that if goods sent for job-work are not received back within 180 days, then the manufacturer shall pay the amount equivalent to CENVAT Credit attributable to the inputs and the manufacturer can take CENVAT Credit again when the inputs or capital goods are received back in the factory. Accordingly, the contention of the appellant was not found tenable and the proposed demand of Rs.1,67,854/- was confirmed along with interest and also equal amount of penalty was imposed under Rule 15 of Central Excise Rules, 2004.

3.3 Being aggrieved, the appellant preferred an appeal before the Commissioner (Appeals), who vide the impugned order observed that in similar facts and circumstances, in the appeal for the earlier period, vide Order-in-Appeal dated 28.2.2011, where the issue was identical, it was held that the appellant was required to reverse the proportionate quantity of CENVAT Credit. Further, in respect of penalty, it was held that there is no element of a fraud, suppression etc. in the facts and circumstances, and it is a case of subsequent notice for the existing dispute and accordingly penalty was reduced to Rs.50,000/-.

4. Being aggrieved, the appellant have preferred the appeal before this Tribunal on the ground among others that the findings of the Commissioner (Appeals) is erroneous in observing that there is no material change in the provisions with respect to job-worker as existed prior to 1.4.2000 inasmuch as in the old Rule 57F(5)(i), waste and scrap arises in the course of processing of inputs at place of job-worker was required to be returned to the factory of the assessee and where such waste and scrap was not returned, the assessee was required to pay excise duty on such waste and scrap as per such Rule 57F(5)(ii) of the Central Excise Rules, 1944. Whereas there is no such stipulation in the new Rule w.e.f. 1.4.2000 read with Rule 4(5)(a) of the Cenvat Credit Rules. Further, non-incorporation of Rule 57F (5) of erstwhile Central Excise Rules, 1944 in the Cenvat Credit Rules, 2002/2004, clearly manifests that the Legislature had intentionally omitted the said provisions. Thus, the waste and scrap generated at the job-worker's place should be returned to the assessee and in case waste and scrap is not returned, duty should be paid as were in existence prior to 1.4.2000. It is

further urged that this position has been clarified by the Board vide Circular dated 3.4.2000 (supra), wherein para 5 and 6 of the said Circular read as follows: -

> *5.Some doubts have been raised whether CENVAT credit would be admissible on the part of the input that is contained in any waste, refuse or bye product. In this context it is clarified that CENVAT credit shall be admissible in respect of the amount of inputs contained in any of the aforesaid waste, refuse or bye product. Similarly, CENVAT should not be denied if the inputs are used in any intermediate of the final product even if such intermediate is exempt from payment of duty. The basic idea is that CENVAT credit is admissible so long as the inputs are used in or in relation to the manufacture of final products, and whether directly or indirectly.*

> *6.A specific provision has now been made if the inputs or capital goods are cleared to a job worker. It has been provided that they should be received back within 180 days. If they are not received, the manufacturer shall debit the CENVAT credit attributable to such inputs or capital goods, otherwise it will be an offence. However, the manufacturer shall be entitled to take CENVAT credit as and when the goods sent to the job worker are received back. If part of the goods are received back within 180 days and the rest of the goods are received back after 180 days, the obligation for debiting the credit shall arise only in respect of CENVAT credit attributable to that part which is not received within 180 days.*

4.1 The purport of the clarificatory circular is that the processed inputs are required to be received back from the job-worker and any waste and scrap generated in the premises of job-worker are not required to be received back and accordingly credit of duty availed in respect of such inputs contained in the waste and scrap so generated cannot be denied. Further reliance is placed on Single Member Bench's ruling of this Tribunal in the case of Forbes Aquatech Ltd. Vs. Commissioner of Central Excise, Calicut [2005 (230) ELT 629 (Tri-Bang)], where in similar facts and circumstances, the Tribunal has held as under: -

> *6. I have carefully considered the submission and find that the Rule 57 F(5) earlier to the period in question required the waste to be returned to the factory of manufacturer of final product. However the amended Rule 4(5)(a) applicable to the period in question as reproduced above refers only to return of the final product within 180 days and it does not have any specific provision with regard to return of waste/scrap. Return of final product is not disputed. The board has clarified in para 5 of their letter dated 3-4-2000 extracted supra that Cenvat credit cannot be denied on the waste/refuse or by-product. This issue has been clarified in the case of CCE v. Shakumbari Sugar & Allied Industries Ltd., in para 4 which is extracted supra. In terms of this case, the assessee is eligible to avail Cenvat credit on the waste produced in the manufacture of final product. Therefore, the order against the appellant Forbes Aquatech is not legal and proper. The same is set aside by allowing the appeal.*

4.2 Further reliance is placed on another SMC's ruling in the case of Mahindra Hinoday Industries Ltd. Vs. Commissioner of Central Excise, Pune-I [2014 (308) ELT 555 (Tri-Mum)], wherein this Tribunal relying on the earlier ruling of this Tribunal in the case of Forbes Aquatech Ltd. (supra) and also in view of the clarification by CBE&C vide its circular dated 3.4.2000 (supra) held that it is immaterial if the scrap has been generated at the end of job workers, who is availing SSI exemption on the scrap, as the Circular has clarified that inputs contained in waster and scrap generated during course of manufacture of final product is admissible. In such circumstances, the principal manufacturer is entitled to avail CENVAT Credit on inputs contained in waste and scrap generated at the end of the job worker. Accordingly, the appellant prays for allowing the appeal.

5. The learned AR for Revenue relies on the impugned order and further relies on another SMC decision dated 19.9.2011 in the case of Mahindra Hinoday Industries Ltd. Vs. Commissioner of Central Excise, Pune-I 2013 (292) ELT 456 (Tri-Mum). In that case the duty liability of the principal manufacturer in terms of Rule 4(6) of Cenvat Credit Rules, 2004 where credit was allowed to the manufacturer on condition that waste and scrap generated at job worker's premises would either be brought back or removed on payment of duty and held that Rule 4(6) of Cenvat Credit Rules, 2004 clearly indicates that the Revenue can impose conditions in the interest of revenue, including the manner in which duty and interest leviable is to be paid. The Commissioner had prescribed a manner in which duty liability was to be discharged by Trade Notice No. 38/2002, wherein if waste and scrap generated during the course of job-work, the job worker who is manufacturer of waste and scrap under the Central Excise Rules and the liability to pay duty is on the person, who produced or manufacture the excisable goods in terms of Rule 4 of Central Excise Rules and duty liability have to be discharged in the manner provided in Rule 8 of the said Rules. The manner of payment of duty and its liability is governed by Rules 4 and 8 of Central Excise Rules. They are not in any way altered or changed by the Cenvat Credit Rules, 2004 and accordingly in view of the condition prescribed in Rule 4 of Central Excise Rules by the Commissioner, it was held that the assessee as the principal manufacturer is liable to pay the duty on the scrap generated at the job-worker's end not brought back to its premises.

6. Having considered the rival contention, I hold that waste and scrap are not manufactured goods whether they are generated at the premises of the principal manufacturer or at the premises of job-worker and accordingly, the legislature have consciously not made any provisions for reversal of any credit taken on duty paid inputs in case of clearance of waste and scrap and/or, there non-return from the job worker's premises under the Central Excise Rules, 2002 read with Cenvat Credit Rules, 2002/2004. Accordingly, I set aside the impugned order and allow the appeal in favour of the appellant with consequential benefit, if any, in accordance with law.

(Pronounced in Court)

(Anil Choudhary)
Member (Judicial)