CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 58116 Of 2013

[Arising out of OIA No. 51/CE/Appl/CHD-I/2013 dated 13.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II]

M/s R. B. Forging (P) Ltd. (Unit-I), **: Appellant (s)**
E-164-165, Phase-VII, Industrial Area, Mohali, Punjab

Vs

CCE, Chandigarh-I **: Respondent (s)**
C.R. Building, Sector 17-C, Chandigarh-160017

APPEARANCE:
Shri Gagan Kohli, Advocate for the Appellant
Shri Raman Mittal, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

ORDER No. A/60250/2023

Date of Hearing:09.08.2023

Date of Decision:11.08.2023

Per : S. S. GARG

The present appeal is directed against the impugned order dated 13.03.2013 passed by the Commissioner (Appeals) of Central Excise, Chandigarh-II.

2. Briefly the facts of the present case are that the appellant is engaged in the manufacture of Rough Forgings, Tractor Parts and MV Parts and had cleared the goods for export both under LUT on without payment of duty as well as on payment of duty and claimed rebate (refund) of duty paid. During audit it was noticed that the appellant was recovering tool and die charges from various parties on sale invoices issued to them without charging central excise duty. A show cause notice dated 23.03.2011 was issued to the appellant on the
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ground that the amount was being charged in addition to the sale amount recovered from the parties and in view of Rule 6 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules 2000, tool and dies development charges form the part of the assessable value as additional consideration and are thus liable to Central Excise duty. It was stated in the show cause notice that the appellant had realized tool and development charges of Rs. 74,01,143.00 (Rs. 74,01,143.00 (Exports) + Rs. 25,000.00 (Domestic)) from various buyers on sale invoices issued to them on which central excise duty of Rs. 9,96,674.00 was not paid and hence the same was demanded along with interest and proposal for imposition of penalty.

3. The appellant filed reply to the show cause notice and contested the demand on the ground that the proceedings relates to export of goods which is not subject to excise duty.

4. After following due process, the Adjudicating Authority vide Order-in-Original dated 19.03.2012 confirmed the demand and recovery of central excise duty along with interest under Section 11A and 11AB respectively and imposed equivalent penalty under Section 11AC of the Act.

5. Aggrieved by the said order, the appellant filed appeal before the Ld. Commissioner (Appeals) and the Ld. Commissioner (Appeals) vide Order in Appeal dated 20.03.2013 in para 6, held that once it is established that the goods manufactured out of the subject tools and dies were exported without payment of duty under LUT, then there is no question of demand of duty on the value charged for the development of tools and dies. However, in respect of the exported

goods cleared on payment of duty, the apportioned value of the tools and dies charges should form part of the assessable value and Central Excise duty is to be paid. The authority below was directed to calculate the duty in above terms and inform the appellant. The demand of duty to this extent was confirmed and also liable for equivalent penalty. Thereafter, the appellant wrote a letter dated 08.08.2013 to the Additional Commissioner of Central Excise & Service Tax, Chandigarh and requested for calculation of duty in terms of the direction issued by the Ld. Commissioner (Appeals) but till date no such information has been received by the appellant. Hence, the present appeal.

6. Heard both the parties and perused the case records.

7. Ld. Counsel appearing for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts and law. He further submitted that entire charges received on account of export of goods and the appellant is entitled to claim rebate of duty since there is no dispute of export of goods, foreign remittance and also submission of proof of exports. He further submitted that the distinction made by the Commissioner (Appeals) that the export under LUT is different from export under rebate is against the export policy as the exported goods are relieved from central excise duty. He further submitted that in case the development charges of tools and dies are directed to form part of assessable value and excise duty is be paid on the same, at the same time the appellant is entitled for rebate / refund of said duty then the entire proceedings will be revenue neutral. He also submitted that the lower authority had failed to calculate the duty as

per the direction in para 6 of the impugned order. He also submitted that the imposition of penalty is not justified as it is not a case of evasion of excise duty.

8. On the other hand, the Ld. DR reiterated the findings in the impugned order. In support, he relied upon the decision of the Tribunal in the case of Jay Cee Auto Fab (P) Ltd. vs. CCE, Faridabad reported in 2010-TIOL-1881-CESTAT-DEL.

9. After considering the submissions of both the parties and perusal of the material on record, we find that in the present case, the entire charges received by the appellant on account of tools and dies which were used in the production were on account of export of goods and there is no dispute regarding the export of goods, foreign remittance and proof of export. We also find that the distinction made by the Ld. Commissioner (Appeals) that the export under LUT is different from export under rebate is against the export policy because the exported goods are not subject to central excise duty and the entire situation is revenue neutral.

10. Further, we also find that inspite of the direction of the Ld. Commissioner (Appeals) in para 6 of the impugned order, the lower authority failed to calculate the duty even after the expiry of 10 years.

11. Further, we find that the decision relied upon by the Ld. DR is not applicable in the facts and circumstances of this case because the said decision relates to additional consideration which is to be included in the assessable value in terms of Rule 6 of the Central Excise Valuation Rules, 2000 pertains to the domestic sale and not export of goods and hence, the said decision is not applicable in the present case because here the entire proceedings relates to export of goods.

12. In view of discussion above, we hold that the impugned order is not sustainable in law and set-aside the same by allowing the appeal of the appellant with consequential relief, if any, as per law.

(Pronounced on 11.08.2023)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

G.Y.