

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.235 of 2011

(Arising out of Order-in-Appeal No.04/Kol-I/2011 dated 25.01.2011 passed by Commissioner of Central Excise, (Appeal-I), Kolkata.)

M/s. Zeus Plastics Private Limited

(8/3D, Gurudas Dutta Garden Lane, Kolkata-700067.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-I

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

.....Respondent

APPEARANCE

Shri Saurabh Bagaria, Advocate for the Appellant (s)

Shri S.S. Chattopadhyay, Authorized Representative for the Respondent

**CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

FINAL ORDER NO. 75252/2023

DATE OF HEARING : 24 April 2023

DATE OF DECISION : 24 April 2023

Per : K. ANPAZHAKAN :

Heard both sides.

2. The facts of the case are that the Appellant is a SSI unit manufacturing plastic articles. They have received raw materials viz. plastic granules and manufactured final products on behalf of M/s. B.S. Enterprise, on receipt of job charges. The raw materials were received under the cover of Delivery Challans and they have not taken credit of the duty paid on the said raw materials. After the job work, they have cleared the excisable goods without payment of duty for the Financial Years 2005-06 and 2006-07, as their value of turnover was within the SSI Exemption limit. The Department contended that the value of

clearances of the goods cleared to M/s. B.S. Enterprise was includible in the turnover for the purpose of computation of SSI exemption limit of the Appellant. Accordingly duty was demanded from the Appellant, after crossing the SSI exemption limit for the financial years 2005-06 and 2006-07. The Appellant agreed for inclusion of the value of clearances for M/s B.S Enterprises in their turnover and paid duty accordingly. For the purpose of computation of duty, value of raw material supplied by M/s. B.S. Enterprise was taken into account and paid duty by issuing TR-6 challans.

3. The case of the Appellant is that they are entitled for availing the credit of duty paid on the raw materials received from M/s. B.S. Enterprise as they have paid duty on the final product by including the cost of raw material and job charges. They stated that M/s. B.S. Enterprise have procured the raw materials from various parties including M/s. South Asia Petrochem Ltd. on payment of duty and issued challans to the Appellant indicating the duty paid. The Ld.Adjudicating authority passed Order rejecting the claim of the Appellant to avail CENVAT Credit of the duty paid on the raw material on the ground that the Challans are not the proper documents for availment of CENVAT Credit under Rule 9 of the CENVAT Credit Rules. The Order was upheld by the Commissioner (Appeals). The Appellant is before us against the Impugned Order.

4. The Appellant contended that the Ld.Commissioner(Appeals) has passed the Order without assigning any further discussion on the merits of the decision taken by the Adjudicating authority and hence it is not sustainable. They claimed that Challans are admissible documents for availment of CENVAT credit and relied upon the following decisions:-

(a) Union of India v. Marmagoa Steel Ltd.

[2008 (229) E.L.T. 481 (S.C.)]

(b) Commissioner of Central Excise, Coimbatore v. Sonal Vyapar Ltd.

[2009 (245) E.L.T. 642 (Tri.-Chennai)]

5. We find that the decision of the Tribunal relied upon by the Appellant in the case of Commissioner of Central Excise, Coimbatore v.

Sonal Vyapar Ltd. is relevant to the facts of the present case. The relevant para of the said decision is reproduced below:-

"4. We find that the issue in this case stands settled by Tribunal's order in the case of CCE, Coimbatore v. Bharat Electric Stampings, [2008 \(224\) E.L.T. 121](#) (Tri.-Chennai) wherein credit has been held to be admissible even when the inputs were received on stock transfer invoice and not under sale invoice. The Tribunal has held that credit cannot be denied to an assessee for the sole reason that the inputs were received under stock transfer invoices, particularly, in the absence of any dispute as to the duty paid nature of the inputs, receipt of the same and the genuineness of the duty paying documents. Applying the ratio of the above decision, we uphold the impugned order of the lower appellate authority and reject the appeal. The cross-objection is disposed of accordingly."

6. From the above para we find that the Tribunal in the above cited decision has held that credit can be allowed on the basis of stock transfer invoices issued when duty-paid nature of the raw material is not in dispute. We find that Rule 9 of the CENVAT Credit Rules prescribes certain documents based on which CENVAT Credit can be availed by a manufacturer. Rule 9 (2) of the CENVAT Credit Rules clearly states that CENCAT Credit cannot be denied on the ground that the document submitted for availment of credit does not contain certain details. In the present case also the challans issued by the Appellant can be eligible documents for the purpose of allowing the credit, provided the duty paid nature of the raw materials supplied by M/s. B.S Enterprise is established. The Appellant claimed that they have the duty paid documents received from their suppliers. Thus, for allowing the credit , the duty paid nature of the raw material received by them from M/s B.S. Enterprise needs to be verified. We find that the Impugned Order does not contain any finding to this effect. Accordingly, we

observe that the Order-in-Appeal passed by the Ld. Commissioner(Appeals) is liable to be set aside and the issue is to be remanded back to the original Adjudicating authority for the purpose of verifying the duty paid documents available with the Appellant.

In view of the above, we set aside the impugned order passed by the Ld.Commissioner(Appeals) and remand the matter back to the original Adjudicating authority.

(Dictated and pronounced in the open Court.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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