CUSTOMS,EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH : COURT NO - 3

EXCISE Appeal No. 10048 of 2019-SM

(Arising out of OIA-CCESA-SRT-APPEALS-PS-131-2018-19 dated 12/07/2018 passed by Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-DAMAN)

Essel Propack Limited **……Appellant**
Survey No. 30/2,29/1,30/2p1/33, 28/P3,33/5/11,14/P8,
Behind Bhilad Police Station, Village-Dhanoli,
Valsad, Gujarat

VERSUS

C.C.E. & S.T.-Daman **...Respondent**
3rd Floor...Adarsh Dham Building, Vapi-Daman Road, Vapi
Opp.Vapi Town Police Station,
Vapi, Gujarat- 396191

APPEARANCE:
Shri Prakash Shah, Advocate for the Appellant
Shri Dharmendra Kanjani, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR

Final Order No. A/ 12371 /2021

DATE OF HEARING: 20.09.2021
DATE OF DECISION: 20.09.2021

Ramesh Nair

The brief facts of the present case are that the appellant have availed the Cenvat credit on the strength of bill of entry which is though in the name of the Head Office but as per the appellant the goods were received in the factory of Silvasa Unit. The case of the department is that since the bill of entry is not in the name of Silvasa Unit and the appellant could not establish the receipt/consumption of the inputs in the factory of Silvasa, credit is not admissible to the appellant. Accordingly, the Cenvat credit was denied.

2. Shri. Prakash Shah, Learned Counsel appearing on behalf of the appellant submits that only for the reason that the bill of entry is in the name of Head Office, credit cannot be denied if it is established that the goods imported under the said bill of entry have been received in the factory of the appellant that is in Silvasa Unit and used for the manufacture of final product. He placed reliance on the following judgments:-

- Union of India Vs. Marmagoa Steel Ltd.-2008 (229) ELT 481 (SC.)
- Marmagoa Steel Ltd Vs. Union of India -2005 (192) ELT 82 (Bom.)
- Lalitha Equipment Vs. CCE, Nagpur-2018 (363) ELT 1187 (Tri. Del.)
- CCE, Bhopal Vs. SS Cropcare Ltd.-2016 (343)ELT 1087 (Tri.-Del.)
- SGS India Pvt Ltd. Vs. Comm. Central Excise, Thane I -2012 (26) STR 395 (Tri.-Mum.)
- EEI Industries Ltd. Vs. CCE., Bhopal-2013 (287) ELT 475 (Tri.-Del.)

2.1 To support his contention that only because of the bill of entry bearing the name address of the Head Office, credit cannot be denied, he further submits that as regard the receipt and use of the goods the adjudicating authority has given the finding that the appellant have not submitted the documents to establish the receipt and use of the inputs in the appellants factory. The same finding was adopted by the Learned Commissioner (Appeals). it is his submission that when the appellant have submitted the sample documents consisting of the SAP account maintained by the assessee, LR whereby it is clearly established that the goods importer under the bill of entry were received by the Silvasa Unit and used for the manufacture of final product. He also submits that the lower authority have denied the Cenvat credit also on the ground that the appellant could not satisfied the audit officer regarding the receipt and use of the goods in the factory. He submits that when the documents were produced before the adjudicating authority it is he who has to satisfy himself, on the basis of those documents regarding receipt and use of the goods. Therefore, on this ground also the Cenvat credit cannot be denied. He further submits that, in the show cause notice extended period was invoked and confirmed by both the lower authorities. He submits that the finding on the limitation on the extended period is that, the appellant has not disclosed that the credit was taken on invalid document. He submits that the credit was taken on the bill of entry even though it has name and address of the Head Office. It is an admissible document for taking Cenvat Credit as per the judgment cited above. Therefore there is no reason to invoke the extended period in the facts of the present case.

3. Shri. Dharmendra Kanjani, Learned Superintendent (AR) appearing on behalf of the revenue reiterates the finding in the impugned order. He further submits that the lower authority have clearly recorded that the appellant could not satisfy regarding the receipt and use of the goods

covered under bill of entry. He further submits that, since the appellant have multiple units the bill of entry bearing the name of Head Office cannot be a valid document for availing the Cenvat credit by the appellant unit as there is no co –relation with the goods received by the appellants unit.

4. I have carefully considered the submissions made by both the sides and perused the record. I find that the Cenvat credit was denied on two grounds:-

(i) The bill of entry bearing the name and address of Head Office.

(ii) The co-relation of the goods covered under bill of entry with the receipt and consumption at the appellant's factory was not established.

5. I find that as regard the first reason for denial that the bill of entry is having the name and address of the Head Office. The Cenvat credit on this ground cannot be denied as has been settled in the above judgment's cited by the Learned Counsel.

6. In my view even though the bill of entry is bearing the name and address of the Head office the only criteria to be satisfied is that the goods under the said bill of entry has been received by a unit of the appellant company and the same is used by in the manufacture . Therefore, on the ground of the bill of entry bearing in the name of Head office, credit cannot be denied. As regard the receipt and use of the goods in the appellant's factory I find that the adjudicating authority as well as the commissioner (Appeals) given the finding that the appellant could not satisfy the Audit Officer with the documents regarding receipt and use of the goods. I completely disagree with the adjudicating authority for the reason that once the show cause notice was issued, it is the adjudicating authority to satisfy himself that whether the charge made in the show cause notice is established or not. He cannot depend on the Audit Officers' view otherwise whole purpose of adjudication will be of no use. As submitted by the Learned Counsel and referred to the various documents that the documents were produced before the adjudicating authority it was incumbent on the adjudicating authority to verify those documents and give an independent finding without referring to the objection raised by the Audit Officer which the adjudicating authority has filed to do so. In this circumstances, I am of the view that the matter limited to the issue regarding receipt and issue of the inputs in the manufacture of the final products need to be reconsidered

on the basis of the documents produced by the appellant with the documents referred by the Learned Counsel I am of prima facie view that if this documents are carefully scrutinized it will clearly show that the appellant has received the inputs in their Silvasa unit and used therein for manufacture of final products. Since, all the documents are not before me and verification was not done at the adjudication stage the only option left is to remand the matter to the adjudicating authority.

7. Accordingly, I allow the appeal by way of remand to the adjudicating authority. The issue of limitation is also kept open, appeal is allowed by way of remand to the adjudicating authority.

(Dictated and Pronounced in the open court)

Ramesh Nair
Member (Judicial)

Prachi