

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. E/383/2010-DB

(Arising out of OIA No. 463-2013-CUS-COMMR-A—KDL dated 15/07/2013 passed by Commissioner of CUSTOMS-KANDLA)

C.C.E, Ahmedabad-ii - **Appellant**

Vs.

Maize Products - **Respondent**

Represented by:

For the appellant : Shri T.G. Rathod, Jt. Commr. (AR)

For the respondent : Shri Amal Dave (Advocate)

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)

Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 29.11.2018

Date of Decision: 02.01.2019

ORDER NO. **A/10004/2019**

Per: Raju

This appeal has been filed by Revenue against Order of Commissioner dropping Show Cause Notice issued to M/s Maize Products, Ahmedabad. M/s Maize Products is engaged in manufacture of various products and availing CENVAT credit. The appellants are also manufacturing certain exempted, or chargeable to nil rate of duty, excisable goods namely Maize starch powder, Maize Oil, Hydrol, etc. The appellants were issued Show Cause Notice demanding an amount to be reversed in terms of condition B of sub rule 3 of Rule 6 of Cenvat Credit Rules, 2004 along with interest. Penalty was also sought to be imposed under Rule 15(1) of the CENVAT Credit Rules, 2004. The proceedings against the appellant were dropped by the Commissioner relying on the decision of the Tribunal in the appellant's own case having order no. A/2470/WZB/AHD/08 dated 19/11/2008. The Commissioner observed that the appellant has reversed the credit at the rate of 25% on the quantity of product attributed to the

exempted goods, dropped the demand relying on the order in the appellants own case. Revenue filed the appeal against the said order on the strength of the decision of the Hon'ble High Court of Bombay in the case of M/s Nicholas Piramal (India) Ltd. 2009 (244) ELT 321 (Bom.)

2. Ld. AR reiterates the grounds of the appeal.

3. Ld. Counsel for the respondent pointed out in their own case, Tribunal relying on the decision of Hon'ble High Court of Allahabad in the case of Hello Mineral Water (P) Ltd 2004 (174) ELT 422(All.) granted them benefit in the identical circumstances. He further pointed out that in their own case in similar circumstances, Hon'ble High Court of Gujarat upheld the decision of the Tribunal granting them relief reported in 2009 (234) E.L.T. 431 (Guj). He further pointed that the SLP filed by the Revenue against the said order has been dismissed by Hon'ble Apex Court on 20.11.2009.

4. We have gone through rival submissions. We find that the issue has been settled in appellant's own case by the decision of Tribunal upheld by Hon'ble High Court of Gujarat as reported in 2009 (234) ELT 431 (Guj.). The SLP against said decision has also been dismissed by Hon'ble Apex Court.

4.1 Moreover, it is seen that in 2010, Govt. of India introduced a retrospective amendment in section 73 of the Finance Act, 2010 to Rule 6 which granted relief to such cases. In case of ICMC Corporation Ltd., Hon'ble High Court of Madras took note of the said amendment and granted relief in similar circumstances be observed as follows:

"4. We find from a reading of the amendment made to Rule 6 under Section 73 of the Finance Act, 2010 that the procedure of the Cenvat Credit Rules under Rule 6 was brought in with retrospective effect from September, 2004 by insertion under Rule 6(6), which reads as under :

S. No.	Provisions of Cenvat Credit Rules, 2004 to be amended	Amendment	Period of effect of amendment
1	2	3	4
	<p>Rule 6 of the Cenvat Credit Rules, 2004 as published vide Notification Number G.S.R. 600 (E), dated the 10th September, 2004 [23/2004-CENTRAL EXCISE (N.T.), dated the 10th September, 2004].</p>	<p>In the Cenvat Credit Rules, 2004, in Rule 6, after sub-rule (6), the following sub-rule shall be inserted, namely :</p> <p>"(7) Where a dispute relating to adjustment of credit on inputs or input services used in or in relation to exempted final products relating to the period beginning on the 10th day of September, 2004 and ending with the 31st day of March, 2008 (both days inclusive) is pending on the date on which the Finance Bill, 2010 receives the assent of the President, then, notwithstanding anything contained in sub-rules (1) and (2), and clauses (a) and (b) of sub-rule (3), a manufacturer availing Cenvat credit in respect of any inputs or input services and manufacturing final products which are chargeable to duty and also other final products which are exempted goods, may pay an amount equivalent to Cenvat credit attributable to the inputs or input services used in, or in relation to the manufacture of, exempted goods before or after the clearance of such goods :</p> <p>Provided that the manufacturer shall pay interest at the rate of twenty-four per cent, per annum from the due date till the date of payment of the said amount.</p> <p>Explanation: For the purpose of this sub-rule, "due date" means the 5th</p>	<p>10th day of September, 2004 to the 31st day of March, 2008 (both days inclusive).</p>

		<i>day of the month following the month in which goods have been cleared from the factory.</i>	
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As per Section 73 sub-section (2) of the Finance Act, 2010 the assessee has to make an application to the Commissioner of Central Excise along with documentary evidence and a Certificate from the Chartered Accountant or a Cost Accountant, certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of exempted goods within a period of six months from the date on which the Finance Bill, 2010 received the assent of the President.

5. *Considering the fact that the assessee had reversed the credit even prior to the amendment and the order of the Tribunal is in fact no different from what is contemplated under the Finance Act, 2010, we do not find anything survives further for this Court to consider the merits of the case pleaded by the Revenue.*

Relying on the aforesaid decision and on subsequent retrospective amendment, we find no merit in the appeal filed by the Revenue and the same is dismissed.

(Pronounced in the open Court on 02.01.2019)

(Raju)
Member (Technical)

(Ramesh Nair)
Member (Judicial)

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