

***In The Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad***

Appeal No. E/11583/2018-SM

[Arising out of OIA-CCESA-SRT-APPEALS-PS-741-2017-18 dated 28/02/2018 passed by Commissioner
(Appeals) Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

M/s. Wimplast Ltd

Appellant

Vs

C.C.E & S.T –Surat-I

Respondent

Represented by:

For Appellant: Mr. Bhushan Jani (Advocate)

For Respondent: Mr. A. Mishra (A.R.)

CORAM:

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

Date of Hearing/Decision:13/12/2018

Final Order No. A/ 12948 /2018

Per: Ramesh Nair

The brief facts of the case are that the appellant availed Cenvat Credit on inputs namely Plastic Granules. The Plastic Granules are used for the manufacture of Plastic Moulded Furniture. The appellant have also removed the input as such from time to time on payment of duty. The case of the department is that the duty so paid on the removal of inputs is lower than the Cenvat Credit on the input availed at the time of receipt of such Plastic Granules. Accordingly the demand of differential Cenvat amount was confirmed. The Ld. Commissioner (Appeals) in the impugned order upheld the demand. Therefore, the appellant filed the present appeal.

2. Shri. Bhushan Jani, Ld. Chartered Accountant appearing on behalf of the appellant submits that the appellant have correctly paid the duty which is equal to the Cenvat Credit availed on the input at the time of receipt thereof, he shown me the stock account wherein the running stock of the Plastic Granules is much more than the quantity of input removed.

Accordingly, the duty paid of the inputs, considering the old stock is actually correct, hence, the demand of duty on the basis of current purchase on input cannot be made.

3. Shri. Amit Kumar Mishra, Ld. Deputy Commissioner (AR) appearing on behalf of the Revenue reiterates the finding of the impugned order.

4. On careful consideration of the submissions made by both the sides and perusal for the records, I find that the demand was made by the Revenue of differential Cenvat amount, considering the inputs removed as such is out of the current purchase, therefore, there is difference of duty. However, on perusal of the running stock account, I find that the quantity removed from time to time was carried forward from the old stock and the stock balance of the input was much more than the quantity cleared by the appellant. Therefore, if FIFO system is applied then the removal of input must be considered from the old stock in such a position it cannot be contented that the appellant have cleared the input as such for the current purchases. In absence of any direct co-relation with the current purchases the demand cannot be sustained.

5. I am of the view that in this type of transaction from the running stock the FIFO system has to be applied and accordingly last available stock should be considered as if such goods was removed from the stock, therefore, I am of the view that the demand confirmed for the differential duty is not supported by any evidence. Hence, the impugned order is set aside appeal is allowed.

(Dictated and pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Prachi