

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

Appeal No. E/12401/2018-SM

[Arising out of OIA-CCESA-SRT-APPEAL-PS-909-2017-18 dated 28.03.2018 passed by the
Commissioner (Appeals) Commissioner of Central Excise, Customs and Service Tax-Surat-I]

C.C.E. & S.T.,- Vapi

Appellant

Vs

M/s Inject Care Parentals Pvt. Ltd

Respondent

Represented by:

For Appellant: Shri L. Patra (AR)

For Respondent: None

CORAM:

HON'BLE SHRI RAMESH NAIR, MEMBER (JUDICIAL)

Date of Hearing/Decision: 10.12.2018

Final Order No. A/ 12971 /2018

Per: Ramesh Nair

The cenvat credit was disallowed to the respondent on the ground that the cenvat credit was taken on Xerox copies of the bill of entry. Being aggrieved by the order in original, the respondent filed appeal before Ld. Commissioner (Appeals), who has held that only endorsed bill of entry is a proper document for availing the cenvat credit, considering the same, Ld. Commissioner (Appeals) has allowed the appeal, therefore, the present appeal filed by the Revenue.

2. Sh. L. Patra Ld. Assistant Commissioner (AR) appearing on behalf of the Revenue reiterates the findings of the impugned order.

3. None appeared on behalf of the respondent despite notice.

4. I have carefully considered the submissions made by Ld. AR and perused of records, I find that the original authority denied the credit only on the ground that the credit was availed on Xerox copies of bill of entry, such bill of entry was not endorsed in favour of the respondent,

however, the original bill of entry along with endorsement was produced before Commissioner (appeals). The Ld. Commissioner (Appeals) considering the same, passed the following order:

- “6. I have gone through the facts, impugned order, submissions of the appellant in the appeal and various documents submitted by them. The short issue involved in this appeal is as to whether the cenvat credit availed by the appellant on the Xerox companies of invoice/bills of entry issued in the name of their principal manufacturer and not in their own name and the same were also not endorsed by the proper authority also, is proper or otherwise. The adjudicating authority has denied it whereas the appellant says that they had produced all original bills of Entry before the authority even though they did not consider the same that the goods were received in their factory and used for manufacturing of excisable goods which is not dispute that in view of judgment of the Tribunal in the case of Akzo Nobel Coatings (India)Ltd. Vs. C.C.E., Bangalore-2013 (290) ELT 108 (Tri. Bang), the credit is allowed.
7. The validity of the document i.e. Bills of entry is not disputed. The only allegation is that the credit has been taken on the Xerox copy of the bills of entry issued in the name of principal manufacturer and not in the name of the appellant and the same was not endorsed by the proper authority. During the course of personal hearing, the appellant have produced the original copy of the bills of entry and the declarations made by M/s Zydus Animal Health Limited, Ahmedabad (who is importer as well as the sated principal manufacturer) and submitted photocopy of the same, in the said declarations, which were to be submitted earlier in the period of erstwhile Modvat Credit Rules, the importer has intended to availed the credit at the factory premises of the appellant, it is not the case of the department that the said importer has availed the credit on these bills of entry also there is no observation that the imported goods mentioned in these bills of entry were not received at the factory premises of the appellant and not utilized in the manufacture of goods. Further, I find that there is no provision of endorsement of bill of entry under the new set of cenvat credit Rules, 2004. However, the importer has made declarations intending to avail credit at the factory promise of the appellant in terms of erstwhile Central Excise Rules, 1944, which is sufficient to take the view that the appellant has correctly availed the credit on the strength of such bill of entry. So far as there is not dispute on receipt of the goods in the factory of the appellant and their utilization for manufacture of goods by them the credit cannot be denied on the ground that the bills of entry were not endorsed or any other. The case of Akzo Nobel Coatings (India) Ltd. Vs. CCE, Bangalore-2013 (290) ELT 108 (Tri. Bang) relying on the judgment of Hon’ble High Court of Bombay, cited and relied upon by the appellant is squarely applicable in the facts and circumstances of the instant case. The Hon’ble Tribunal, Ahmadabad’s decision in the case of CCE, Surat-I Vs. Pratik Processors- 2009 (246) ELT 620 (Tri. Ahmd) is also in the similar facts and circumstances hence applicable in this case.

8. *in view of above, I hold that the cenvat credit is not deniable to the appellant and consequently, the demand of interest and imposition of penalty are also not sustainable. Accordingly, the impugned order is set aside to this extent and the appeal is allowed."*

From the above order, it can be seen that only discrepancy pointed out by the adjudicating authority was that the credit was availed on Xerox copies without declaration, the such declaration was submitted by the respondent before the Ld. Commissioner (Appeals). He has elaborately discussed such documents and allowed the appeal. In this fact, I do not find any infirmity in the impugned order, accordingly, the impugned order is upheld. Revenue's appeal is dismissed.

(Dictated & pronounced in the open court)

(Ramesh Nair)
Member (Judicial)

Seema