CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No. 70929 of 2018-[SM]

(Arising out of Appeal No. 77-CE/APPL/Audit-LKO/2018 dated 15/03/2018 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s BJD Print System, **.....Appellant**

(60-B Dada Nagar, Kanpur-208012)

VERSUS

Commissioner of CGST & Central Excise, **....Respondent**

(Lucknow)

APPEARANCE:

Absent on call, for the Appellant
Shri Rajeev Ranjan Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINAL ORDER NO. 71041 / 2019

Date of Hearing : 11/03/2019
Date of Pronouncement : 23/05/2019

PER: ARCHANA WADHWA

As per facts on record the appellant is engaged in the manufacture of Flexible Laminated Rolls and Plastic Articles of Packing falling under chapter 39 of Central Excise Tariff Act. Due to short circuit in their factory, a fire accident took place on 21.08.2014 resulting in destruction of final product as also semi finished goods and raw materials. The said fact was intimated to their jurisdictional Central Excise authorities under the cover of their letter dated 21.08.2014 indicating the extent of distruction.

Subsequently, remission application seeking remission of duty to the extent of Rs.2,57,944/- was filed by them.

2. Proceedings were initiated against them by way of issuance of show cause notice dated 15.10.2015, proposing to rejection remission in respect of destroyed Final product as also to recover the Cenvat credit in respect of inputs lying 'as such' or as contained in the semi finished goods. The notice culminated into an order passed by the Original Authority, rejecting the remission and confirming the Cenvat credit along with imposition of penalty.

3. On appeal Commissioner (Appeals) observed that occurrence of fire in the assessee's factory was on account of natural causes and as such the appellant was entitled to the remission of duty. Similarly, in respect of inputs contained in the semi finished goods, he set aside the confirmation of demand to the extent of Rs.11,85,799/-. However, in respect of the credit of Rs.13,54,474/- availed on inputs lying in stock and destroyed in fire, he uphold the same by observing as under:-

> "Now, I will examine whether the appellant is required to reverse the Cenvat credit amounting to Rs.13,54,474/- availed on inputs lying in stock and destroyed in fire. Inputs which were lying in the appellant's factory unutilized and destroyed in fire, it is seen that the said inputs were admittedly neither used in the manufacture of final product nor even issued for the manufacturer. They were lying as such in the appellant's premises. The Cenvat credit on inputs is available only when the inputs are used in or in relation to the manufacture of final products. In the present case, they can not be even said to have been used in relation to the

manufacture of final product, or can be said to have been destroyed during the manufacture of final products. As the same were not issued for the manufacture. Thus, the credit of Rs.13,54,474/- involved on the inputs lying in stock and destroyed in fire before being put to use for manufacture, could not be allowed and the same is required to be paid back or reversed by the appellant.

In the case of VFC Industries Pvt. Ltd. Vs CCE & ST, Vadodara-II, [2017 (352) ELT 507- the CESTAT Ahmedabad] vide final order No.A/10952/2016-wzb/ahd dated 21.09.2016 held that the credit taken on inputs lying in stock and destroyed in fire before being put to use for the manufacture of final products need to be reversed or paid back by the appellant since the said goods destroyed in fire and could not be used for the manufacturing of finished goods."

4. The appellants in the memo of appeal has not disputed the fact that the inputs, in respect of which the credit stands confirmed by the lower authorities were lying in the stock **"as such"** and had not been issued for further manufacture. Reliance stands placed on the Tribunal's Order in the case of VFC Industries Pvt. Ltd. by Commissioner (Appeals), which has clearly held that eligibility criteria of using inputs in or in relation to manufacture of Final Product is not satisfied as the inputs were lying in stock and were destroyed before being used and as such he has held that the same require reversal of Cenvat credit. Reference by the appellant to the decision of the Tribunal in the case of Arihant Studs Ltd. 2016 (332) ELT 827 (Tri.-Delhi) is not appropriate, inasmuch as, the issue in that case was remission of duty in respect of the Final destroyed products.

5. In view of the foregoing, I find no reasons to interfere in the impugned order of Commissioner. Accordingly, the appeal is rejected.

(Pronounced in open court on-23/05/2019)

(Archana Wadhwa)
Member (Judicial)

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