FAX : 0532-2400149 REGISTERED / AD

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
38,MG Marg Civil Lines,Old Red Building,Allahabad-211001
Regional Branch, Allahabad

Dated: 05/09/2016

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/70747-70748/2016-EX[DB] dated 29/08/2016

I am directed to transmit herewith a certified copy of order passed by the Tribunal under section 35-C(1) of the Central Excise and Salt Act, 1944.

Asstt. Registrar

Application	Appeal	Name and Address of Appellant
1	E/51880/2014	**TRIVENI ENGINEERING & INDUSTRIES LIMITED** UNIT KHATUALI MUZAFFARANAGAR UP
		Name and Address of Respondent
2		C.C.E. & S.T.-Meerut-i EXCISE CHOWK...UNIVERSITY ROAD,MANGAL PANDEY NAGAR, MEERUT, UTTAR PRADESH-250005

Copy To

3Advocate(s) / Consultant(s):

R. KRISHNAN
297-E, POCKET-II, PHASE-I,
MAYUR VIHAR, DELHI
110091

4 Bar Association, CESTAT, Allahabad

5 Director Publications, Customs, Excise. I.P. Estate, Delhi

6 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, New Delhi-3

7 Company Law Institute of India Pvt. Ltd., No.2 (old no.36), Vaithyaram Street, T. Nagar, Chennai-17

8 Taxmann Allied Service Pvt. Ltd., 59/32, New Rohtak Road, New Delhi-110005

9 Easy Service Tax Online Dot Com Pvt. Ltd., 407A, Iscon Mall, Satellite Road, Ahmedabad-15
10 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)
11 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070
12 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38
13 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082
14 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032
15 C.D.R. 16 Office Copy 17 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
REGIONAL BENCH : ALLAHABAD

Appeal Nos. : E/51880 & 53366/2014-EX [DB]

Arising out of Orders-in-Appeal Nos.137/APPL/MRT-I/2013 dated 30.09.2013 & 06-CE/APPL/MRT-I/2014 dated 13.01.2014 both passed by Commissioner (Appeals), Central Excise, Meerut-I.

For approval and signature:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

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1. Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982? : No
2. Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not? : Yes
3. Whether His Lordship wishes to see the fair copy of the Order? : Seen
4. Whether Order is to be circulated to the Departmental Authorities? : Yes

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Triveni Engineering & Industries Limited ...APPELLANT(S)

VERSUS

C.C.E. MEERUT-I ...RESPONDENT (S)

APPEARANCE

Shri R.K. Krishnan, Advocate for the appellants
Shri Pawan Kumar Singh (Supdt.) (A.R.) for the Department

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

DATE OF HEARING & PRONOUNCEMENT : 29.08.2016

FINAL ORDER NO. 70747, 70748/2016

CUSTOMS, EXCISE & SERVICES TAX APPELLATE TRIBUNAL
सीमा शुल्क, उत्पाद एवं सेवा कर अपीलीय अधिकरण
सत्यमेव जयते

Per Mr. Anil G. Shakkarwar :

These two appeals are on the same issue filed by the same assessee but for the different periods. Therefore, they are taken up together for decision.

2. Show Cause Notice C No. V(15)Off/Adj.-I/41/2012 dated 06/03/2012 was issued to the appellant. The said show cause notice was adjudicated though Order-in-Original No. 08/ADC/MRT-I/2013 dated 01/03/2013. An appeal preferred against the said Order-in-Original dated 01.03.2013 was decided through Order-in-Appeal No. 137/APPL/MRT-I/2013 dated 30/09/2013. The period for issue of show cause notice dated 06.03.2012 was from February, 2007 to January, 2012. The said Order-in-Appeal dated 30.09.2013 is impugned order in Appeal No. E/51880/2014. Subsequently show cause notice C No. V(30)T/MZN-I/ADJ/Triveni/203/2012 dated 28.02.2013 for period covering from February, 2012 to June, 2012 was issued to appellant. The said show cause notice was adjudicated through Order-in-Original No. 02/AC/MZN-I/2013 dated 04.09.2013. An appeal preferred against said Order-in-Original dated 04.09.2013 is decided through Order-in-Appeal No. 06-CE/APPL/MRT-I/2014 dated 13.01.2014. The said Order-in-Appeal dated 13.01.2014 is impugned order for Appeal No. E/53366/2014.

3. The brief facts of the case are that the appellants are engaged in the manufacture of sugar and they are availing Cenvat Credit of duty paid on inputs and capital goods. The appellants manufactured goods and packed them in 50kg. and 100kg. bags. Subsequently the

production is entered in RG-1 Register. The assessee within the premise of their factory have separate place for packing of sugar into 1kg. packs and 5 kg. packs and the goods so packed were bearing brand name "Shagun". Sugar packed in 1kg. and 5kg. packs is cleared from the factory on payment of duty. For packing sugar in 1kg and 5kg. packs the appellant used various packing materials such as flexible rolls, LDPE flexible rolls, laminated printed rolls, ink blank, corrugated boxes, printing ink, packing roll and wash solution etc. They took credit of duty paid on such packing materials as Cenvat Credit. It appeared to Revenue that packing of sugar in 1 and 5kgs. pack within premises of factory was post manufacturing activity and therefore it appeared to Revenue that Cenvat Credit availed on above stated packing materials used for packing of goods into 1 & 5kgs. packs was inadmissible to the appellants. Therefore, above referred show cause notice dated 06.03.2012 was issued to the appellant invoking the proviso to Subsection 1 of Section 11A of Central Excise Act, 1944 with the proposal for recovery of Cenvat Credit of Rs. 23,94,185/- under Rule 14 of Cenvat Credit Rules, 2004. There was a proposal to impose equal penalty in the said show cause notice. The said show cause notice also had a proposal to impose personal penalty on Sri Mohinder Singh, DGM (Finance). The appellant submitted before the Original Authority that the contention of Revenue that packing of sugar in 1kg and 5kg pack is post manufacture activity is *ex-facie* erroneous in law. They further submitted that in such cases irrespective of form in which the sugar is sold, the duty payable is specific duty per quintal of sugar and the packing of 5 & 1 kg pack is process incidental of completion of manufactured product. The stage of manufacture in case of sugar in pack of1kg & 5kg has been extended till such packing is completed in packing division of the factory. Therefore, Cenvat Credit availed on packing material is proper, correct and appropriate in law. They further contended that show cause notice was hit by limitation since the factory was visited by audit team in every year and duty was paid on the final product at the time of clearance and there was no intention to evade duty and that there has been no suppression of fact on their part. The Original Authority has held that the process of manufacture of sugar has its last stage in dryer house where the goods are bagged in 50 and 100 kgs packs. Subsequently, the assessee was removing sugar from 50 and 100 kgs. bags and packing them into 1 & 5 kgs. packs and therefore packing of goods in smaller packs was activity post manufacturing. Therefore, he denied the Cenvat Credit of Rs. 23,94,185/- and imposed equal penalty. He dropped the proceedings against Sri Mohindar Singh. The appellant carried the matter before the Commissioner (Appeals). The grounds of appeal before Commissioner (Appeals) were that the said Order-in-Original dated 01/03/2013 was against the definition of input under Rule 2 of Cenvat Credit Rules, 2004 wherein the goods used as packing material used in relation to manufacture of final products within the factory of production has been defined as input and as such inputs have been denied the credit by Original Authority. The inputs were used within the factory of production and still the Original Authority has denied the credit. The demand was hit by limitation and therefore the impugned order deserved to be set aside. The Appellate

Authority did not accept the argument and rejected the appeal through Order-in Appeal dated 30/09/2013.

4. Through show cause notice dated 28/02/2013, the Revenue proposed to deny Cenvat Credit of Rs. 1,10,798/-. The grounds of show cause notice were same as those of show cause notice dated 06/03/2012. The assessee submitted the same grounds in reply to show cause notice. The Original Authority confirmed the demand and ordered to pay interest and imposed equal penalty through Order-in-Original dated 04/09/2013. The appellant carried the matter before Commissioner (Appeals) on the similar grounds. The Commissioner (Appeals) through an Order-in-Original dated 13/01/2014 rejected the appeal filed by the appellants.

5. Aggrieved by above stated two Orders-in-Appeal, the appellant is before this Tribunal. The grounds of appeal *inter-alia* are that, it is erroneous to conclude that process of manufacture of sugar is complete when sugar is manufactured and entered in the daily stock register after packing in 50kg/100kg bags. It is further erroneous not appreciating that the goods have to be assessed in the condition in which the goods are cleared from the factory and that the show cause notice dated 06/03/2012 is hit by the bar of limitation and that the Cenvat Credit was admissible as per the definition of inputs in Cenvat Credit Rules, since the inputs were packing material and used within the factory of manufacturer.

6. Heard the learned counsel for the appellants. He has urged that the goods are not removed from the factory and then re-packed in 1 & 5 kgs pack. The packing unit packing the goods in 1 & 5 kgs pack is

within the premises of the factory. The conditions for inputs to be eligible for Cenvat credit are that the inputs are brought into the factory and the inputs are duty paid in and are used in or in relation to the manufacture of final products. The goods were packing materials which were duty paid and brought in the factory and used within factory for packing of goods before the final products was cleared from the factory on payment of duty. Therefore, Cenvat Credit is admissible to them. There are a large number of pronouncements holding that packing of goods is not post manufacturing activity. He has relied on ruling of Hon'ble High Court of Chhattisgarh in the case of ***Commissioner of Customs and Central Excise Vs. Advani Oerlikon Ltd. reported at 2014(306) E.L.T. 66 (Chhattisgarh).*** He has further submitted that Commissioner (Appeals), Meerut in the case of M/s. DSM Sugar through his Order-in Appeal No. MRT/EXCESS/000/APPL-I/137-CE/2014-15 dated 16/12/2-15 has held that Cenvat Credit involved in packing material and inkjet printer is admissible to the appellants of said appeal.

7. The learned D.R. for department supported the impugned Orders-in-Appeal.

8. We have considered the rival contentions. On perusal of show cause notice dated 16/03/2012, we find that the packing of sugar into 1 & 5 kgs pack is done in the factory premises. The goods when brought into such packing division are again entered into RG-I Register and subsequently packed into 1 & 5 kgs packs. The clearance of such goods from factory on payment of a specific rate of duty. The packing material on which Cenvat Credit was availed were used for packing of

goods into 1 & 5 kgs. pack within the premises of factory. We find that the ratio of the ruling of Hon'ble High Court of Chhattisgarh in the above stated case of Advani Oerlikon Ltd. is squarely applicable in the present case. The Hon'ble High Court of Chhattisgarh has observed in its said ruling as follows:-

> *"12. Similarly, the Supreme Court in the case reported in AIR 2005 SC 4043=2005 (183)E.L.T. 241 (S.C.) (Dharampal Satyapal v. Commissioner of Central Excise, Delhi-I, New Delhi) while dealing with shomewhat similar issue speaking through Kapadia J. (as his Lordship then was) for the Court held as under in para 18:*
>
> *"18. We do not find merit in the above submissions. Marketability is an attribute of manufacture. It is an essential criteria for charging duty. Identity of the product and marketability are the twin aspects to decide changeability. Durability of the product depends on whether the product is known to the market. The test of marketability is that the product which is made liable to duty must be marketable in the condition in which it emerges. Marketable means saleable. The test of classification is, how are the goods known in the market. These tests have been laid down by this Court in a number of judgments including Moti Laminates Pvt. Ltd. v. Collector of Central Excise, Ahmedabad- MANU/SC/0658/1995 = 1995(57) ECR 1 (S.C.)= 1995 (76)E.L.T. 241(S.C.) Union of India v. Delhi Cloth & General Mills Co. Ltd. - MANU/SC/0619/1997 = 1997(92)E.L.T. 315 (S.C.); Cadila Laboratories Pvt. Ltd. v. Commissioner of Central Excise, Vadodara- MANU/SC/0105/2003 = 2003 (152)E.L.T. 262(S.C.)*
>
> *13. Applying the aforementioned test laid down by the Supreme Court to the facts of this case, we find that the item "Hot Melt Unit"was admittedly used by the assessee while packing their finished goods - "welding electrodes". Since packing is held to be one of the essential components of the manufacturing process of the finished goods and being in the nature of incidental or/and ancillary to the main manufacturing activity, the assessee in this case was rightly held entitled to claim Modvat credit on the item- "Hot Melt Unit" treating the same as capital goods under the Rule 57Q ibid for claiming benefit.*
>
> *14. In our view since the issue sought to be urged by the applicant (Revenue) no longer remains res integra and stands decided by the two decisions of the Supreme Court in favour of the assessee no referable question of law arises in the case. In other words, the view taken by the Tribunal is*

in accordance with the law laid down by the Supreme Court in aforementioned two decisions and hence this is not a fit case for calling any question proposed by the applicant from the Tribunal."

It is very clear in view of the above stated ruling that packing is activity incidental or/and ancillary to the main manufacturing activity. Therefore, Cenvat Credit of duty paid on inputs used for packing sugar in 1kg & 5 kg packs is admissible to the appellant. Therefore, we hold that the impugned Orders-in-Original and Orders-in-Appeals are unsustainable. We set them aside and allow both the appeals with consequential reliefs, if any.

(Pronounced and dictated in the open Court)

Sd/-
(ANIL G. SHAKKARWAR)
MEMBER (TECHNICAL)

Sd/-
(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Patel/-

प्रमाणित प्रति / Certified True Copy
31/10/16 SPS
सहायक पंजीकार / Asstt. Registrar
सीमाशुल्क, उत्पादशुल्क एवं सेवा कर
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