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: 10/10/2017

To

Appellant as per address in table below

Respondent as per address in table below

Final Order No. A/71198-71199/2017-SM[BR] dated 03/04/2017

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/158/2010	**VIMAL PLAST (I) PVT. LTD.** PLOT NO. 3, UDYOG VIHAR, GREATER NOIDA.
2	E/159/2010	**SH. SATISH BATRA, DIRECTOR OF** M/S VIMAL PLAST (I) LTD. PLOT NO. 3, UDYOG VIHAR, GREATER NOIDA.

	Name and Address of Respondent
3	-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307
4	-C.C.E. NOIDA C-56/42, Sector-62, Noida-201307

Other Appellants and Respondents as per Annexure

Copy To

5Advocate(s) / Consultant(s):

Naveen Mullick,Adv
B-388, Meera Bagh,
New Delhi,
Delhi

6 Bar Association, CESTAT, Allahabad

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

8 M/s Centax Publications Pvt. Ltd., 1512-B, Bhishm Pitamah Marg, Opp ICICI Bank of Defence Colony New Delhi-3

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

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

11 LAWCRUX Advisors Pvt. Ltd., LAW House, 1-8, Sector-10, Faridabad 121003 (Haryana)

12 TaxIndiaOnline.com Pvt. Ltd., 2nd Floor, Vasant Arcade, Vasant Kunj, New Delhi - 110070

13 Mark Professional Services Pvt. Ltd., 108, Everest Block, Aditya Enclave, Hyderabad – 38

14 The ICFAI society, 52, Nagarjuna Hill,Punjagutta Hyderabad.-500082

15 M/S Knowledge Processing Pvt. ltd.(taxmanagementindia.com),FF-19,1st Floor,Cross River Mall,CBD Ground,Near Karkardooma Court,Delhi-110032

16 C.D.R.   17 Office Copy   18 Second Folder Copy   19 Guard File

Asstt. Registrar

IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL Nos.E/158-159/2010-EX[SM]

(Arising out of Order-in-Appeal No. 293-294/CE/APPL/NOIDA/2009 dated 21/10/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

M/s Vimal Plast (I) Pvt. Ltd.,

Shri Satish Batra, Director of **Appellants**

Vs.

Commissioner of Central Excise, Noida **Respondent**

Appearance:

Shri Naveen Mullick, Advocate for Appellant
Shri D.K. Deb, Assistant Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing : 03/04/2017
Date of Decision : 03/04/2017

FINAL ORDER NOs.:.71198-71199/2017..

Per: Anil Choudhary

These two appeals are filed by the appellants-assessee against Order-in-Appeal No. 293-294/CE/APPL/NOIDA/2009 dated 21/10/2009 passed by Commissioner of Central Excise & Customs (Appeals), Noida.

2. The issue in these two appeals filed by appellants is-that the appellants are manufacturer of plastic moulded parts for products like CTVs/Washing machine/Refrigerators etc which are chargeable to duty. The appellant gets the inputs both on job work, and also

purchase on their own account for their own manufacture, the issue involved is whether the appellants on return back of such material to the supplier cleared their own raw materials on which Cenvat credit was availed by them and as to whether Cenvat credit involved on such self owned material was liable to be reversed by the appellants under the provisions of Rule 3(4) of Cenvat Credit Rules, 2002/2004.

3. Same as para 2.1 of his stay order.

4. Learned Counsel for the appellants states that there is no dispute about the fact that in respect of inputs received under job challan for job work, no Cenvat credit had been taken and also that in certain cases where due to some reasons, the material received for job work was not processed, the appellant decided to return the same and the same had been returned. There is no dispute that the raw materials returned to the customers was the same as of the same quality as the material which had been received, even if it may not be from the same lot. That in most cases the raw material returned to the customers was the one which had been received from them. The inputs received from different customers, for job work, are issued for processing and stored near the machine separately. That in any case, there is no conclusive evidence with the Department to prove that the materials returned to the customers was the one which had been purchased by the appellant Company for manufacture on their own account and in respect of which Cenvat credit had been taken. It is further explained that appellants own raw material when issued to the floor for production and if returned to store, for any reason resulting in discontinuation of

production, proper endorsement of returned material is made in the store register. The materials received on job work under the procedure as per Notification No.214/86, if returned back to the suppliers, were not entered in the store register but in the Job work Register wherein all details are entered. Such job work Register contain the supplier's Name, Challan number by which materials received, quantity of raw material and plastic, moulded components manufactured and returned back to the supplier. In case for any reason if the raw material received for job work was cleared as such, that was also recorded in the job worker register. It is further stated that the premises of the main supplier M/s Vimal Moulders (I) Ltd. was also searched and statement of Shri Satish Batra, director of the Company was recorded in the follow-up investigation. The appellant had sought copies of the verification reports drawn at the premises of M/s Vimal Moulders (I) Ltd. However the copy of statement of Shri Batra supplied to them. However, the request for cross-examination was made, officers having visited the premises of Mr Vimal Moulders (I) Ltd. Gurgaon, to carry out verification. The allegation of the revenue is that the same goods received by the appellant for job work having not been returned to the supplier of material. It is submitted that so long the description of the products, value, quantity, quality of goods returned back being the same as received by the appellants from the respective supplier, they have correctly followed the provisions of law. It is further urged that the whole case of revenue is based on presumption and no case of any leakage of Government Revenue having seen made out. In any case even the raw material received from the suppliers on job work is also duty paid. In the alleged story of slapping of only on the raw materials return back, there is no gain made out to either the appellants or the suppliers of the raw materials having sent material on job work. He also urges that there have been no discrepancy of stocks having been found either at suppliers end or the appellants. Thus, on the basis of only allegation on presumptions, the whole demand has been raised which is not sustainable. He further states that revenue relied heavily on the statement of Shri R.K. Mallick, who was the production manager of the appellant. The learned Counsel have read out the relevant portion from the statement of Mr. Mallick recorded in Section 14 wherein he stated that he is working in the appellant's unit for the last four years. Further, the answer to question No.11 of his statement dated 30.10.2007 is reproduced below:-

"whether any verification of stock of raw materials lying on production-floor is done by him; it was answered – stock of WIP of raw materials, components and rejections as lying on floor is taken every month on the first day. We also produce the statements so drawn as on April 1, May and June, 2006, and respect of which question was put to him, "please confirm as to whether these statements prepared by you and also stated about the material shown in the statements." In answer it was stated that the statement prepared by him after stocktaking of WIP material, further indicating that item wise quantity of WIP material lying on production floor on the first of the month have been indicated in the said statements, and further stated that quantity of WIP materials are shown in the above statements pertain to our own materials only, it does not include job work materials. After a few days of recording of the statement dated 30th of October, 2007 Mr. Mallick retracted his statement, vide letter dated 31/10/2007 addressed to the Supdt. Central Excise, Anti-Evasion Noida, stating that– "I may submit that I only assumed charge of manager production since September, 2006 and had no personal knowledge with regard to the system of account of raw material vis-a-vis maintenance of records by the above firm– (M/s Vimal Plast (I) Pvt. Ltd. prior to September, 2006. Therefore, my statement dated 30/10/2007, related to the period prior to September, 2006 is not based on my personal knowledge and accordingly may not be correct." It is further pointed out by learned Counsel that the appellant had sought cross-examination of Shri R.K. Mallick and the investigating officers who visited the premises of the appellant company and also premises of raw material supplier on job work basis- M/s Vimal Moulders (I) Ltd. Gurgaon. The said prayer was rejected vide the Order-in-Original by the Additional Commissioner, observing that the case is based on documentary evidence, which are available on record. Statement of Shri R.K. Mallick dated 30/10/2007 is also available on record and a copy was already given to the appellant. Further, Shri R.K. Mallick, employee was working in the factory since 2006. Accordingly, he concluded that cross-examination of R.K. Mallick is not warranted in this case. Further, as regards enquiry conducted at the factory premises of M/s Vimal Moulders (I)

Ltd., Gurgaon, the Additional Commissioner found that the receipt of materials is not under dispute. Further, observing that in the notice it have not been stated that suppliers were not made the parties who sent materials for job work. The allegation is that material received for job work were consumed by the appellant in the factory and thereafter they cleared their own raw materials on which credit was availed. Accordingly, the learned Counsel states that there have been miscarriage of justice by not giving an opportunity for cross-examine the persons, the statement of whom, reliance is placed by the authority and on this score also the impugned orders are vitiated.

5. The learned A.R. for the revenue have defended the impugned order and emphasized that materials returned by the appellant company to the customers, which was received on job work, was not the material received from them but was the material which had been purchased by the appellant company for manufacture of plastic components on their own account and in respect of which Cenvat credit had been taken and thus, the allegation of revenue is that Cenvat, as goods have been removed as such, the provisions of Rule 3(5) of CCR 2002/2004 would become applicable and the amount of Cenvat credit taken has to be reversed and/or repaid. Further, pointing out to the finding of the adjudicating authority in para 6.9 of the order he stated that so far the contention of the appellants- "even if goods returned to the respective suppliers were considered not to be the same as received for job-work, there was no violation of Notification No.214/86 and/or Rule 4(5) of Cenvat Credit Rules, if the goods

returned are similar in terms of quality, value, quantity etc. This plea of the appellant is not correct and acceptable as the same is not in agreement with the provisions of the Cenvat Credit Rules." He further said that the appellant cleared the inputs on which Cenvat was availed by them in the case of job work materials, without payment of an amount equal to the credit availed on such inputs in contravention of Cenvat Credit Rules, and therefore the demand was rightly made. The adjudicating authority also relied on the ruling of the Apex Court in the case of CC, Madras Vs D. Bhoormull reported at 1983(13) ELT 1546 (SC), wherein the Apex Court held–

"the Department would be deemed to have discharged its burden if it adduces only so much evidence circumstantial or direct as is sufficient to raise a presumption in its favour with regard to the existence of the fact sought to be proved".

7. Having considered the rival contentions, it is evident that in some cases after receipt of the material on job-work basis, the finished goods could not be produced in the given time span. The materials received on job-work were returned to them (Principal). There is no dispute that such unprocessed inputs were returned, and/or was not received by the respective suppliers. The Department's allegation is that in a number of cases the material returned to the customers was not the one which had been received from customers, but was from the stocks of Cenvat credit taken inputs of the appellants. In this case there is no dispute that the inputs were returned to the customers. On such facts, even if the material which had been returned, though maybe from a different lot, by the goods being homogenous, in my

view, it does not make any difference. In respect of the material received on job work, which could not be returned and would be used by the appellant for manufacture on their own account, the Cenvat credit would become available, in any case the situation is revenue neutral. Further, I find except the stock statement of inputs for 14/10/2004, there is no other evidence to show that on each occasion the unprocessed inputs return to the customers were out of the stock of Cenvatable inputs and not inputs which had been received from the customers on job-work. Further, I find that the impugned order is also vitiated for denial of opportunity for cross-examination although prayed by the appellants and the same is directly in the teeth of the rulings of Hon'ble Delhi High Court in the case of M/s Basudev Garg reported at 2013 (294) ELT 353.

8. Accordingly, the appeals are allowed with consequential benefits. The impugned order is set aside.

(Dictated in Court)

-Sd/-
(ANIL CHOUDHARY)
Member(JUDICIAL)

akp

प्रमाणित प्रति/Certified True Copy
25/10/17
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अपील अधिकरण/C.E.S.T.A.T.
38, एम.जी.मार्ग, इलाहाबाद-211001
38, M. G. MARG, ALLAHABAD-211001