CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Application(s) Involved:

E/MISC/20768/2017 in E/1953/2012-DB
E/Early Hearing/20013/2015 in E/1953/2012-DB

Appeal(s) Involved:

E/1953/2012-DB

[Arising out of Order-in-Original No. 16-2012 dated 27/03/2012 passed by CCE, Bangalore-II]

REMIDEX PHARMA PVT LTD
NO.B-249/250, II STAGE, PEENYA
INDUSTRIA ESTATE, BANGALORE 560 058

Appellant(s)

Versus

Commissioner of Central Excise,
Service Tax And Customs
BANGALORE-II
NULL PB 5400 CR BUIDING...QUEENS ROAD,
BANGALORE, - 560001
KARNATAKA

Respondent(s)

Appearance:

Shri Bhanumurthy, Advocate
V. RAGHURAMAN
#466, 9TH CROSS,
1ST BLOCK, JAYANAGAR, NEAR MADHAVAN PARK,
BANGALORE - 560011
KARNATAKA

For the Appellant

Shri N. Jagadish, Superintendent(AR)

For the Respondent

Date of Hearing: 13/02/2018
Date of Decision: 13/02/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. V. PADMANABHAN, TECHNICAL MEMBER

Final Order No. 20279 / 2018

Per : S.S GARG

Today, early hearing application of Department has been listed. Since the issue is in a narrow compass, with the consent of both parties, we allow the early hearing application and proceed to decide the case on merits.

2. The present appeal is directed against the impugned order dt. 27/03/2012 passed by the Commissioner whereby the Commissioner has confirmed the demand of Rs.5,91,28,295/- on the ground that the appellant has availed irregular CENVAT credit on inputs on the basis of Bill of Entry which were not addressed to the appellant.

3. Briefly the facts of the case are that the appellants are engaged in the manufacture of excisable goods i.e. P&P medicaments falling under Chapter 30 of the CETA, 1985. They undertake manufacture of medicaments on loan licnece basis for i. M/s. Glaxo Smithkline Pharmaceuticals Ltd., ii. M/s. Biddle Sawer Ltd., iii. M/s.Micro Labs Ltd. and are availing CENVAT credit of duty paid on inputs used in the manufacture of final products. The Revenue entertained the view that the appellants are availing CENVAT credit on various imported inputs on the strength of Bills of Entry that were not addressed to them. On this allegation, a show-cause notice was issued to them proposing to deny the irregular CENVAT credit availed by them along with interest and penalty. After following the due process of law, the Commissioner vide the impugned order confirmed the demand of CENVAT credit and also imposed equal penalty along with

interest. Aggrieved by the said order, the appellant has filed the present appeal.

4. With this background, we have heard the parties.

5. The learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without appreciating the CENVAT Credit Rules and also contrary to the binding judicial precedent. He further submitted that the issue involved in the present case is no more res integra and has been settled in favour of the assessee by various decisions of the Tribunal. In support of his submissions, he relied upon the following decisions:-

i. CCE, Bhopal Vs. S.S. Cropcare Ltd. [2016(343) ELT 1087 (Tri. Del.)]
ii. CCE, Ludhiana Vs. Pepsi Foods Ltd. [2010(254) ELT 284 (P&H)]
iii. UOI Vs. Marmgoa Steel Ltd. [2008(229) ELT 481 (SC)]

6. On the other hand, the learned AR defended the impugned order and submitted that the appellant has wrongly availed the CENVAT credit on the documents which are not recognized as valid documents under Rule 9 of CENVAT Credit Rules for availment of CENVAT credit. In support of his submissions, he relied upon the following decisions:-

i. Balmer Lawrie & Co. Ltd. Vs. CCE, Kanpur [2000(116) ELT 364 (Tri.)]
ii. Khandelwal Laboratories Ltd. [2006(205) ELT 541 (Tri. Mum.)]

7. After considering the submissions of both the parties, we find that the Division Bench of this Tribunal in the case of CCE, Bhopal Vs. SS Cropcare Ltd. (supra) has decided the identical issue and has held that the assessee is entitled to claim CENVAT credit on the basis of Bill of Entry which is endorsed in his favour by the importer / principal manufacturer so long there is no dispute with regard to duty paid character of inputs and received by the assessee and utilization of the same in the manufacture of the products. It is pertinent to mention the relevant findings of the Triubnal which is contained in para 6 of the aforesaid judgment, which is reproduced below:-

> ***6.*** *It seems that the present appeal stand filed only with mechanical application of mind. There is no dispute about the duty paid character of the inputs, their receipt by the present respondent and utilization of the inputs. The technical objection raised by the Revenue seems to be only one that Bill of Entry was endorsed by the importer in favour of the assessee by the principal manufacturer and such endorsement cannot be accepted. No reference stand made to any of the provisions of law to bar availment of Cenvat credit on the basis of endorsed Bill of Entry. It was not the case of the Revenue that part of the said goods deviated to present respondent. The admitted fact is that goods on record are entirely imported goods and were in original packing which stand diverted to the respondent along with the signature of Customs officer. It is also seen that the demand was raised against the respondent based upon the objection by the audit, which objection was very strongly opposed by the Revenue itself. If that be so, we really fail to understand as to how the Revenue would be aggrieved with the present order of the Commissioner dropping the demand.*

8. Therefore by following the ratio of the said decision, we are of the considered view that the impugned order denying the CENVAT credit only on the ground of endorsed Bill of Entry is not sustainable in law. Therefore, we set aside the impugned order and allow the appeal of the assessee with consequential relief, if any.

(Operative part of this Order was pronounced in court on conclusion of the hearing)

V. PADMANABHAN
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Raja...