CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
SCO 147-148, SECTOR 17-C, CHANDIGARH – 160 017

COURT NO. I

APPEAL NOs. E/1562-1563/2009

[Arising out of Order-in-Original No.12-13/CE/JAL/2009 dated 03.03.2009 passed by the Commissioner of Central Excise, Jalandhar]

Date of hearing/decision: **05.12.2018**

M/s Mahavir Spinning Mills	**:**	**Appellant(s)**
VS		
C.C.E. & S.T.- Ludhiana	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Shri Surjeet Bhadu (Advocate), Shri Abhinav Kansal (Advocate), Shri Veer Singh (Advocate)
Present for the Respondent(s): Shri Bhasha Ram (AR)

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Bijay Kumar, Member (Technical)

FINAL ORDER NO. 63656-63657 /2018

Per : Bijay Kumar

The appellants have filed the present appeal against the impugned order wherein Ld. adjudicating authority has confirmed demand against them as proposed in the show cause notice. Being aggrieved, the appellants are before us. The dispute relates to period 01.03.2006, the appellants had availed Cenvat credit under Notification No. 29/2004-CE dated 09.07.2004 and Notification No. 30/2004-CE dated 09.07.2004 simultaneously, in respect of the different consignments. For the same period, they have availed

Cenvat credit on inputs used in respect of consignments under Notification No. 29/2004-CE and similarly for other period, they have reversed the credit in respect of consignment cleared duty free under Notification No. 30/2004-CE. It was the contention of the appellants that they have followed different procedures as prescribed by the boards from time to time and since they have made reversal as required in respect of exempted clearance, they are entitled to credit in respect of stock lying on 31.03.2006.

2. It is the case of the Department that since they have cleared the consignment availing full exemption under Notification No. 30/2004-CE, they are not entitled to avail Cenvat credit in respect of stock lying on 31.03.2006.

3. Ld. advocate on behalf of the appellants submits that the Ld. adjudicating authority has failed to appreciate the fact that till 31.03.2006, they were availing simultaneously the benefit under Notification No. 29/2004 and 30/2004. The appellant was working under the methods of proportionate use of Cenvat credit at the end of the month, relating to inputs consumed in the manufacture of their finished products (that is threads) cleared after payment of duty under Notification No. 29/2004. Therefore, the credit in respect of inputs consumed in manufacture of threads cleared goods under Notification No. 30/2004 was never taken, in fact. The applications w.e.f 01.04.2006 opted for different methods under which Cenvat credit was first availed on input received for the factory and at the end of the month the credit in relation to inputs consumed in manufacture of threads cleared was reversed. In the other words, the Cenvat credit ultimately was taken only in respect of inputs

consumed in the manufacture of dutiable products. The appellant has also agreed that they opted for the monthly based on the formula for the actual inputs consumed in the dutiable as well as exempted goods as per established norm, prevailing at the relevant time. In support of their claim, they have also produced the certificate from CA regarding the availment and reversal of input credits regarding the clearance of duty paid and exempted goods. It is also submitted that the appellant followed the course methods on the basis of Circular No: 485/3/2007-CX dated 01.02.2007.

4. Learned AR on behalf of Revenue substantiate the order passed by the lower Adjudicating Authority on the ground that the Cenvat Credit has not been taken immediately and the certificate issued by the Chartered Accountant has not been properly explained to the Adjudicating Authority, and therefore, he has confirmed the demand.

5. Heard parties and perused the appeal records.

6. The issue involved in this case is regarding the availment of Cenvat Credit by the appellant on the inputs used by them in the manufacture of finished goods under Notification No. 29/2004 dated 9th July, 2004 and 30/2004 dated 9th July 2004. The appellant is engaged in the manufacture of cotton yarn out of the raw-material that is cotton wool. As per Notification No. 29/2004, textile products made of 100 % cotton require to pay concessional rate of duty at 4 % and other goods at the rate of 8 % without any restrictions regarding the availment of Cenvat Credit of duty paid on inputs. Whereas, the Notification No. 30/2004-CE prescribed full exemption to the goods mentioned therein subject to a condition, that no

Cenvat Credit shall be availed on the inputs used in the manufacture of such goods. After the issuance of the said two Notifications the Central Board of Excise and Customs (for short 'CBEC') issued clarification in respect of aforesaid two Notification vide Circular No. 795/28/2004-CX dated 28/07/2004 clarifying that the manufacture can claim the benefit of both the Notifications simultaneously in respect of similar or dis-similar goods, and there is not restriction on availing the benefit under both the Notifications simultaneously. The appellant opted for simultaneous availment of the said Notification No. 29/2004 and 30/2004 with effect from 1/10.2004. However, as far as the availment of Credit on goods cleared under Notification 29/2004-CE is concerned, there was confusion in the textile industry as some of the them were availing the Cenvat Credit of duty paid on all the inputs used in the manufacture of goods cleared under these two Notifications and reverse the credit afterwards to the extent used in the goods cleared under the Notification 30/2004-CE, however, a few manufactures were availing the proportionate credit on the inputs used in the manufacture of goods cleared under Notification No. 29/2004-CE at the time of clearance. In both the situation, in result remained the same which is incompliance with the conditions laid down in the Notifications referred above. The appellant changed the methodology for reversal of Cenvat Credit with effect from 1/04/2006 to the extent that they started availing the Cenvat Credit on whole of the amount of duty paid on all the inputs and subsequently reversing the proportionate credit used in the manufacture of goods cleared under Notification 30/2004-CE. Subsequently, CBEC, vide Circular No 845/3/07-CX dated 1/02/2007

clarified that any case whether the manufactures is working under both the Notifications No. 29/2004 and 30/2004, he shall avail the proportionate credit at the end of month in respect of inputs used in the manufacture of goods cleared under Notification under 29/2004. Following the said clarification the appellant changed their system of taking Cenvat Credit again which they were following prior to 1/04/2006 with effect from 1/2/2007. The CBEC vide Circular No 858/16/07-CX dated 8/11/2007, further clarified that if the credit taken on input used in the manufacture of final products cleared under Notification No. 30/2004-CE is reversed before utilisation, that will be treated as goods as non availment of credit and would be substantial compliance of Notification No. 30/2004-CE. Therefore, the appellant adopted the mechanism as clarified by the CBEC between 01/04/2006 till 01/02/2007. It is submitted that following the procedure laid down by the Circular dated 1/2/2007 of their own account, debited Cenvat Credit amount the Rs. 103,45,517/- along with interest of Rs. 95,802/- (total amount of Rs. 1,04,41319) for the closing stock as on 31/01/2007 and the said entry was made on 31/3/2007 as the appellant has started the proportionate availment of Credit at the end of the month in view of the aforesaid board Circular. The learned Adjudicating Authority denied the aforesaid credit and confirmed the demand, without appreciating the fact that the method of taking proportionate credit at the end of the month was true as per the procedure prescribed in the CBEC Circular referred(Supra). The confusion arises because of the fact that the appellant carried out the transaction on the given date i.e. 31/03/2007

(a) Credit was taken in respect of stock of goods lying in the factory as on 31/3/2006

(b) Reversal of credit in relation to stock lying in the factory as on 31/1/2007.

7. Both these entries were made on the given date i.e. on 31/3/2007 with respect to stock lying in the factory for two different dates due to changed methodology of taking/availment of credit, which was not appreciating by the learned Adjudicating Authority. This fact was reflected in ER-1 Return submitted to the jurisdictional Central Excise Authority. It was also suggested that the Commissioner's disagreement while adjudicating the case regarding the proportionate credit the reversal authority be illegal and is not in accordance with the CBEC Circular which endorse that. Further, the Adjudicating Authority assertion that the credit may be taken immediately with respect of inputs received in the factory, which amount that if manufacturer does not take credit as soon as inputs are received in the factory he would be denied the benefit thereof is misplaced and for which the reliance is placed on the decision of this Tribunal in case of **Steel Authority India Limited vs. Commissioner of Central Excise, Raipur [2013 (287) ELT 321 (Tri-Del.)** Wherein it is held in para 6 and 8 as under:

> *"6. We have carefully considered the submissions from both the sides and perused the records. The undisputed facts in this case are that while the inputs in respect of which the disputed amount of cenvat credit had been taken had been received during April, 2000 to December, 2006 period, the credit was availed only during Jan. 2007 to March, 2007 period. There is also no dispute about the fact that during the period when the*

inputs, in question, had been received in the mines, the judgement of the Apex Court on the issue as to whether an assessee would be eligible for cenvat credit in respect of inputs used in the mines, even if the mines are captive mines, was against the appellant and this issue was finally resolved in favour of the appellant only by the Apex Courts judgement in the case of Vikram Cement (supra). The point of dispute is as to whether the cenvat credit can be denied if an assessee does not avail the cenvat credit in respect of certain inputs immediately on their receipt.

8. From a plain reading of the above provisions, it is clear that what the Rules prescribes is that a manufacturer can avail cenvat credit in respect of certain inputs immediately on their receipt and there is no time limit period prescribed in these rules in this regard. The word mayin sub-rule of Rule 4 cannot be read as shall. The Departments contention would have been correct if sub-rule (1) of Rule 4 had provided that cenvat credit in respect of inputs shallbe taken immediately on receipt of the inputs. We, therefore, agree with para 10 of the Boards Circular No.345/2/2000-TRU dated 29.08.2000 in this regard which is reproduced below:-

10. Rule 57 AC provides that cenvat credit may be taken immediately on receipt of the inputs in the factory. Some apprehensions have been expressed that if the Cenvat credit is not taken immediately, like within 24 hours or so, the field officers may deny the Cenvat credit. The idea is that if the manufacturer desires he can take the Cenvat credit at the earliest opportunity when the inputs are received in the factory. This , however, does not mean, nor is it even intended that if the manufacturer does not take credit as soon as the inputs are received in the factor, he would be denied the benefit of Cenvat credit. Such an interpretation is not tenable."

8. We, further also find that the appellant has provided the detailed worksheet regarding the availment of the credit certified by the Chartered Accountant which was not accepted by the

Adjudicating Authority. In this case, we are of the view that Chartered Accountant certificate cannot be disagreed without any valid reasons. The acceptance of CA Certificate has been upheld by this Tribunal and the higher courts in a large number of decisions, and therefore, the Commissioner again to ignored the same is prior to the provisions of law. The Adjudicating Authority is bound to follow the departmental Circular which is not there in case at hand.

9 .In view of above, findings we find that the impugned order is not sustainable and liable to set aside. Accordingly, we allow the appeal with consequential benefit if any.

(Operative part of the order pronounced in the open court)

Bijay Kumar
Member (Technical)

Ashok Jindal
Member (Judicial)

Kailash