CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
SCO 147-148, SECTOR 17-C, CHANDIGARH-160017

DIVISION BENCH
Court-I

Date of hearing/Decision:21.03.2018

Appeal No.E/887/2010-Ex

(Arising out of OIA No.58/MA/GGN/10 dt.8.2.2010 passed by the CCE (Appeals), Gurgaon)

Dhruv Industries Ltd. **Appellant**
Vs.
CCE, Delhi-III **Respondent**

Appeal No.E/58044/2013-Ex

(Arising out of OIO no.25/SA/CCE/2013 dt,14,2,2013 passed by the CCE (Appeals), Delhi-III, Gurgaon)

CCE, Delhi-III **Appellant**
Vs.
Dhruv Industries Ltd. **Respondent**

Present for the Appellant: Sh. B.L.Narasimhan, Advocate/
Sh. Amarinder Singh, Advocate & vice versa
Present for the Respondent: Shri Satyapal, AR & vice versa

Coram: Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr.Anil G.Shakkarwar, Member (Technical)

FINAL ORDER NO.62251-62252/2018

PER: ASHOK JINDAL

Both sides are in appeal against the impugned orders. The assessee has also filed cross objection to the appeal filed by the Revenue.

2. The facts of the case are that the assessee is engaged in the manufacture of metalized polypropylene film and metalized polyester film falling under tariff heading 3920.2090 and 3920.6290. The assessee is availing Cenvat credit on capital goods and inputs. The

said inputs were used for manufacturing finished goods which are metalized films used for manufacturing capacitors. The assessee is also availing the benefit of Notification No.25/99-Cus dated 28.2.1999 and Notification No.25/2002-Cus dated 01.03.2002, as applicable during the relevant period and also registered with the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), Rules, 1996. A show cause notice dated 6.12.2006 was issued to the appellant that the activity of metalizing does not amount to manufacture and consequently the assessee was not entitled to take credit of the inputs. Consequently, the benefit of the aforesaid exemption notifications was also not available. The assessee had filed a refund under Rule 5 of the Cenvat Credit Rules, 2004 which was sought to be denied by issuance of a show cause notice dated 2.2.2007 for Cenvat credit remaining unutilized in their Cenvat account on export of goods. For entertaining refund claim, a show cause notice dated 2.2.2007 was issued to the appellant on the ground that as the activity undertaken by the appellant does not amount to manufacture. Therefore, the appellant is not entitled for refund of Cenvat credit. The adjudicating authority has held that the activity of metalizing amounts to manufacture, therefore, dropped the proceedings proposed in the show cause notice dated 6.12.2006. Against the said order, the Revenue has filed the appeal before this Tribunal. The refund claim was denied to the appellant on the ground that the activity of metalizing does not amount to manufacture. Against the said order the assessee has filed the appeal before this Tribunal. The assessee has also filed the cross objection to the appeal filed by the Revenue.

3. Therefore, short issue involved before us is whether the activity of metalizing undertaken by the assessee amounts to manufacture or not.

4. Ld. Counsel for the assessee submits that the interpretation adopted by the department has rendered the exemption Notification No.25/99-Cus dated 28.2.1999 and Notification No.25/2002-Cus dated 01.03.2002 redundant as the imported goods as well as finished goods has been mentioned therein for availing exemption under the said notifications. It is the contention of the assessee that the activity of metalizing undertaken by the appellant amounts to manufacture as per the process stated by the assessee. He also submits clarification sought from the Ministry of Communication and Information Technology and it was clarified that there is a great deal of difference between the plastic film and the metalized film manufactured by the assessee. Therefore, the decision of Hon'ble Supreme Court in the case of Metelex India vs. CCE, 2004 (165) ELT 129 (SC) is not applicable to the facts of this case. He further submits that the Cenvat credit sought to be denied on the ground that the activity of metalizing does not amount to manufacture. It is a fact that the assessee has paid duty on the goods manufactured, therefore, in terms of the decision of Hon'ble Bombay High Court in the case of Ajinkya Enterprises-2013 (294) ELT 203 (Bom.), the assessee is not required to reverse the Cenvat credit as the duty paid on the goods manufactured by the assessee.

5. With regard to the rejection of refund claim, he submits that rejection of refund claim is based on the show cause notice dated

6.12.2006 where it has been proposed that the activity does not amount to manufacture. It is his submission that the refund under Rule 5 of Cenvat Credit Rules, 2004 cannot be denied on the ground that the Cenvat credit is not admissible as the activity does not amount to manufacture. Without prejudice, it is further submitted that the manufacture has wide connotation in so far as is concerned. A process which would not amount to manufacture under the Excise Act would still be considered as manufacture for the purpose of export benefit. There is no requirement under Rule 5 of Cenvat Credit Rules, 2004 that the activity must amount to manufacture for a refund to be granted. Therefore, the refund claim is to be allowed.

6. On the other hand, Ld.AR has relied upon the decision of the Hon'ble Supreme Court in the case of Metelex India (supra) and submits that the transformation of film does not amount to amount, therefore, the assessee is not entitled to avail Cenvat credit and consequently, refund claim of Cenvat credit is not admissible to the assessee.

7. Heard the parties and perused the record.

8. On careful consideration of the submissions made by both sides, we find that the process of manufacture has been explained by Shri R. Rohila, working as Production Manager with the assessee. The same is reproduced as under:-

> *4. Whereas, a statement of Shri R.Rohila, working as Production Manager with the Noticee was recorded under Section 14 of the Act. In his statement dated 15.07.2005, Shri Rohilla, interalia stated that their raw materials were Poly Propylene (P.P.) and Polyester Films upto 12 Micron; that the*

Metalized Films could be of three types viz. (i) Aluminium Metalized Film (ii) Al Zn Metalized Films and (iii) Zinc Metalized films; that their main consumables were Zinc and Aluminium. In the Metalizing plant there were two chambers :- (a) Coating Chamber and (b) Winding Chamber; that in the Coating Chamber, Zinc and Aluminium melting system was installed and in the Winding Section Film Rolls were mounted; that after feeding Aluminium, Zinc and Film Rolls the two chambers were vacuumized completely and then film was run over coating chamber and process of metallization starts; that after about one hour the metallization of Films Rolls ends and then another Roll was loaded and the same process started again; that after removing the metalized Rolls from the mounting it was kept for about 36 hours for aging for stickiness of Aluminium and Zinc on the Films; that after this the metalized rolls were sliitted on slitters in the required widths and then vacuum packed. He also stated that the metalized film was the basic raw materials for capacitor manufacturing (Annexure-I).

9. From the process explained by Shri R.Rohilla working as Production Manager, we find that as in the said process, the goods manufactured by the assessee have been transformed into good which are different and new after a particular process undertaken by the assessee and the goods are marketable as such. We find in this case that the raw material i.e. polypropylene/polyester is subjected to a complex process to ensure that one side of the insulting material is converted into a conductor having a desired thickness with adequate free margin and heavy edge. After metallization process the polypropylene film is no longer a film with insulting properties but a metalized film with conducting properties ready to be used in capacitors. Therefore, the raw material has been transformed into something new i.e. Electronic Capacitor Grade Aluminium Metalized Dielectric Plastic Film which can be used for manufacturing electronic capacitors and the Ministry of Communication and Information

Technology clarified that there is a great deal of difference between the plastic film and the metalized film manufactured by the assessee.

10. We further take note of the fact that the assessee has claimed the benefit of exemption Notification No.25/99-Cus dated 28.2.1999 and Notification No.25/2002-Cus dated 01.03.2002. For better appreciation, both the notifications are reproduced below:-

Notification No.25/99-Cus dated 28.2.1999:

GENERAL EXEMPTION NO.160

Concessional rate of duty on goods imported for the manufacture of excisable goods - In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column (3) of Table below, and falling under the Chapters of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) specified in the corresponding entry in column (2) of the said Table, when imported into India for use in the manufacture of the finished goods specified in the corresponding entry in column (4) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule, as is in excess of the amount calculated at the rate of, -

(a) Nil in the case of the imported goods specified in List A; and

(b) 5% *ad valorem* in the case of the imported goods specified in List B.

(c) 25% *ad valorem* in the case of the imported goods specified in List C:

Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

TABLE

S. No.	Chapter	Description of imported goods	Description of finished goods
(1)	(2)	(3)	(4)
52.	39	Plain plastic film (other than Polystyrene film/of thickness 12 microns or below	Electronic capacitor grade metallised dielectric plastic film.

Notification No.25/2002-Cus dated 01.03.2002:

Exemption to capital goods imported for use by IT/Electronics Industry -

In exercise of the powers conferred by sub-section(1) of section 25 of the Customs Act, 1962 (52 of 1962), the Central Government, being satisfied that it is necessary in the public interest so to do, hereby exempts the goods specified in column(2) of the Table below, and falling under Chapters 82, 84, 85 or 90 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), when imported into India for use in the manufacture of the finished goods specified in the corresponding column(3) of the said Table, from so much of that portion of the duty of customs leviable thereon which is specified in the said First Schedule,

Provided that the importer follows the procedure set out in the Customs (Import of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 1996.

TABLE

S.No.	Description of imported goods	Description of finished goods
(1)	(2)	(3)
54.	Conveyor firing oven BTU; automatic testers; tape and reel machine; printers/screen printers; hot air blowers; metallising machine; ageing/testing machine; epoxy dispensing, coating, encapsulating machine; wire wrapping machine; wire wrapping tools; auto sawing machine with jigs and dust extract; optical comparator; triple roll mill/ball mills; marking machine complete with masks and accessories; auto pin; lead cutting/ forming machine; lead welding machine; life test/burn in machine/ jigs/fixtures; resin filling equipment; auto stacker; scratch down station; chip sorter; powder dip machine; wax impregnation machine; wire forming machine with jigs; baking ovens; stack to capacitance station; manual sawing machine with jigs; soldering bench; oven; box furnace; auto lead cutting machine; auto printer; auto resin mixer EF 60; LCR bridge; low temperature chamber; humidity chamber; insulation resistance tester; calibration standards	Capacitors ; Electronic capacitor grade metallised plastic films for capacitors.

11. We have seen that as per notifications extracted hereinabove,

There is great deal of difference between description of imported goods and description of finished goods. If the description of imported goods and description of finished goods are same, then the notifications become redundant , it is not intention of the legislation. From the tenor of the notification, it is clear that inputs procured by the assessee are altogether different from the goods manufactured by the assessee. Therefore, as the name, character and use of the product has been changed. In that circumstance, the activity undertaken by the assessee shall amount to manufacture.

12. We further take note of the fact that the Revenue is heavily relying on the decision of Hon'ble Supreme Court in the case of Metalex India Pvt.Ltd (supra). In the said case, the case of the Revenue is that the activity of lamination/metalizing amounts to manufacture whereas the assessee was claiming that the product is a film to start with and remains a film after lamination or metallization and no new and distinct product comes into existence and the Revenue was failed to discharge their burden that the activity amounts to manufacture. In these set of facts, the Hon'ble Supreme Court has held that lamination/metalizing does not amount to manufacture whereas in the case in hand the fact is altogether different as the inputs transformed into a new product and known as Electronic Capacitor Grade Aluminium Metalized Dielectric Plastic Film which can be used for manufacturing electronic capacitors. Therefore, activity undertaken by the assessee shall amounts to manufacture. Therefore, we hold that the activity undertaken by the assessee amounts to manufacture. In that circumstance, the question

of reversal of Cenvat credit does not arise. Therefore, the Revenue's appeal deserves no merit and the same is accordingly dismissed.

13. We further take note of the fact that the refund claim of Cenvat credit filed by the assessee has been denied on the ground that the activity undertaken by the assessee does not amount to manufacture, therefore, they are entitled for Cenvat credit. Consequently, they are not entitled for refund thereof.

14. As we have already held that the activity undertaken by the assessee amounts to manufacturer, therefore, the assessee is entitled to refund of Cenvat credit under Rule 5 of Cenvat Credit Rules, 2004 which remains unutilized in the Cenvat credit account on export of goods.

15. In these terms, the appeal filed by the assessee is allowed. The Cross objection to the appeal filed by the Revenue is disposed in the above terms.

16. In the result, Revenue's appeal is dismissed and the assessee's appeal is allowed.

(Dictated and pronounced in the court)

(ANIL G.SHAKKARWAR)
MEMBER (TECHNICAL)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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