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

DIVISION BENCH
COURT NO. I

APPEAL NOs. E/650, 651, 660, 674, 873/2010-EX[DB]

[Arising out of Order-in-Original No. 28-36/CE/CHD-II/09 dated 22.12.2009 passed by the Commissioner of Central Excise, Chandigarh-II]

Date of hearing/decision: 18.07.2018

For approval and signature:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

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(1)Surya Pharmaceuticals Ltd., **(2)Emsons Organic (P) Ltd.,** **(3)DSM Sinochem Pharmaceuticals India Private Limited,** **(4)Alka Remedies Pvt Ltd.,** **(5)Shiva Pharmachem Pvt Ltd.**	**:**	**Appellant(s)**
VS		
C.C.E., Chandigarh	**:**	**Respondent(s)**

Appearance:
Present for the Appellant(s): Sh. Ashok Dhingra, Advocate and
Ms. Smita Singh, Advocate
Present for the Respondent(s): Sh. Tarun Kumar, A.R.

CORAM:

Hon'ble Mr. Ashok Jindal, Member (Judicial)
Hon'ble Mr. Devender Singh, Member (Technical)

FINAL ORDER NO. 62565-62569/2018

Per : Ashok Jindal

The appellants are in appeal against the impugned order wherein Cenvat credit on inputs procured by the job workers in their own account and used in the manufacture of job worked goods sought to be denied on the premise that the inputs in question were not physically received by the principal manufacturer i.e. DSM Sinochem Pharmaceuticals India Pvt Ltd; therefore, the Cenvat credit was denied to the principal manufacturer and penalties were imposed on all the appellants.

2. Brief facts of the case are that the principal manufacturer i.e. DSM Sinochem Pharmaceuticals India Pvt Ltd, is the manufacturer of penicillin and procuring inputs in their own account in their factory. Certain inputs directly gone to the job workers and some inputs were procured by the job workers in their own account and goods were processed by the job workers (co-appellants) on behalf of the principal manufacturer. The principal manufacturer intimated to the Department in terms of Rule 16A of the Central Excise Rules, 2002, the process to be followed by the principal manufacturer for recording the transactions of job worked goods and their manufacturing activity. An intelligence was gathered that the principal manufacturer is not receiving physically the inputs procured by the job workers in their account in their factory; therefore, the investigation was conducted and on the basis of investigation, it was alleged that as the inputs procured by the job workers in their own account but were never physically received by the principal manufacturer. It was supported by various statements during the course of investigation; therefore, it was alleged that the principal manufacturer is not entitled to avail Cenvat credit on the inputs procured by the job workers their own account on the strength of the invoices issued by the job workers to the principal manufacturer. Therefore, a show cause notice was issued to the principal manufacturer as well as co-appellants (job workers) to deny Cenvat credit availed by the

principal manufacturer on the strength on the invoices issued by the job workers for the inputs procured in their own account for processing the job worked goods on behalf of the principal manufacturer. The adjudication took place and the Cenvat credit was denied to the principal manufacturer alongwith interest and penalties on all the appellants were imposed. Against that order, the appellants are before us.

3. Ld. Advocate appearing on behalf of the appellants submits that in this case it is not the allegation against the job workers as well as the principal manufacturer that the inputs in question were not used in the process of manufacturing the job worked goods by the job workers. Therefore, in terms of Rule 3 of Cenvat Credit Rules, 2004 whatever inputs used for manufacturing of final product, the principal manufacturer is entitled to avail the Cenvat credit. To support this contention, he relied on the decision of this Tribunal in the case of *CCE, Delhi-III vs. Interface Microsystems - 2016-TIOL-245-Tribunal-Chandigarh* and on the judgment of Hon'ble Apex Court in the case of *International Auto Ltd vs. CCE, Bihar - 2005 (183) ELT 239 (SC)*.

4. On the other hand, Ld. A.R. opposes the contention of the Ld. Advocate and submits that in this case the adjudicating authority has given a clear cut finding that the job workers are clearing the finished goods to the principal manufacturer and the inputs in question were not received physically in the factory of the principal manufacturer. Moreover, the challans were issued on later date whereas the invoices were issued earlier; therefore, it is clear from the records that the inputs in question were cleared later on which cannot be used for manufacturing of job worked goods.

5. Heard the parties and perused the record.

6. To adjudicate the issue in hand, the crucial document is required to be examined, which is extracted herein below:

ANNEXTURE

SI. No.

CHALLAN

(For movement of inputs or partially processed goods under Cenvat Credit Rule 4(5)(a) from one factory to another factory for further processing / operation.)

DUPLICATE

Name and address of the Supplier / Manufacturer: U/ R 16-A of C.E. Rules

DSM Anti-Infectives India Ltd.
Bhai Mohan Singh Nagar, Toansa
Teh. Balachaur, Distt. Nawanshahr (Pb.)
C.E. Regn No. & ECC No. AABCM4314KXM001

Authorised Signatory

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PART-I

1. Description of Goods: Enzyme (Good Cleared by M/s. Surya Pharmaceutical Ltd. Vide Invoice No. 05/3.4, 7/4.4, 9/5.4, 3/2.4.06 for job work of M/s DSM Toansa)
2. Identification marks and numbers, if any: —
3. Quantity (Nos./Weight/Litre/Meter): 9.5 Kg.
4. Tariff Classification: 3507.00
5. Estimated value of inputs / partially procesed inputs: Rs. 55100/=
6. Rate of reversal of credit: NA
7. Total amount of reversal: NA
8. Serial Number of debit entry in PLA/RG 23 A Part II and date: NA
9. Date and time of issue: 07/04/2006, 16.10 Hrs
10. Nature of processing / manufacturing required to be done: Conversion into 6-Amino Penicillanic Acid Crude
11. Factory / place of processing / manufacturing: M/s. Surya Pharmaceutical Ltd., 383 Industrial Area, Phase-I, Panchkula
12. Expected duration of processing / manufacturing: 180 days

For DSM ANTI-INFECTIVES INDIA LIMITED

Signature of Manufacturer / Authorised Signatory

Place: Toansa
Date: 7/4/2006

PART-II

1. Date and time od despatch of finished goods to parent factory / another manufacturer and entry no. and date of receipt in the account of processing factory: [illegible]
2. Quantity despatched (Nos. / Weight / Litre / Meter) and entered in Account: 440, 447, 452, 456
3. Nature of Processing / manufacturing done: [illegible]
4. Quantity of wastematerial returned to the factory or cleared for home consumption, Invoice No. and date. Quantum of duty paid (Both figure and works): Nil

Signatuer of processor

Name of the factory: Surya Pharmaceutical Ltd.
Address: 383, Industrial Area, Phase-I, Panchkula (Haryana)

Place:
Date: 6 April 06

PART-II

To be filled by parent factory in duplicate of challan on receipt of goods from the processing factory.

Certified that I / We have received the goods removed under the above challan on 3/4, 4/4 & 9/4/06 and have taken credit of the amount vide RG 23-A / PLA entry No. .... dated ....

For DSM ANTI-INFECTIVES INDIA LIMITED

Signature of Manufacturer / Authorised Signatory

On examination of the challan extracted herein above, it is clear that although the job workers have issued the invoices with regard to the inputs in question which have been used by the job workers for processing the job worked goods and received thereof by the principal manufacturer. The said challan has not been disputed that the same is fake. In these circumstances, after examining the said document, although there may be a procedural lapse on the part of the principal manufacturer, but it cannot be denied the inputs in question were not used in process of job worked goods by the job workers. In these circumstances, whatever inputs used in manufacturing of final product is entitled Cenvat credit to the principal manufacturer. Same view was taken by this Tribunal in the case of *CCE vs. Interface Microsystems (supra)*, wherein this Tribunal has held as under:

> ***"6****. The issue before me is whether the respondent is entitled to avail credit on the services used by the job worker who is exclusively manufacturing the goods on behalf of the respondent by availing exemption under Notification No.214/86-CE dated 25.3.1986 or not. For better appreciation, Rule 3 of Cenvat Credit Rules, 2004 is extracted herein below:-*
>
> ***RULE 3. CENVAT credit.*** *— (1) A manufacturer or producer of final products or a [provider of output service] shall be allowed to take credit (hereinafter referred to as the CENVAT credit) of -*
>
> *(i) to (x) - - - - - - - - - - - - - - - - - ------*
>
> *[(xi) the additional duty of excise leviable under [section 85 of Finance Act, 2005 (18 of 2005),]*
>
> *paid on -*
>
> *(i) any input or capital goods received in the factory of manufacture of final product or [by] the provider of output service on or after the 10th day of September, 2004; and*
>
> *(ii) any input service received by the manufacturer of final product or by the provider of output services on or after the 10th day of September, 2004,*

including the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-Central Excise, dated the 25th March, 1986, published in the Gazette of India vide number G.S.R. 547(E), dated the 25th March, 1986, and received by the manufacturer for use in, or in relation to, the manufacture of final product, on or after the 10th day of September, 2004."

7*. On plain reading of the said rule, it is clarified that the said duties, or tax, or cess paid on any input or input service, as the case may be, used in the manufacture of intermediate products, by a job-worker availing the benefit of exemption specified in the notification of the Government of India in the Ministry of Finance (Department of Revenue), No. 214/86-CE dated 25.3.1986. As the rule specifically provided that if the job worker avails the exemption under Notification 214/86-CE dated 25.3.1986 in that circumstance, the principal manufacturer is entitled to avail the credit of the services availed by the job worker. The said issue has already been examined in the case of Godrej Sara Lee Ltd. and Zenith Machine Tools Pvt.Ltd. (supra). Therefore, those decisions are not applicable to the facts of the case. Moreover, in the case of MRF Ltd., this Tribunal has examined the said issued in detail and thereafter this Tribunal has observed as under:*

> *10. I have considered the arguments from both sides. The definition of "input services", nowhere specifies that the services have to be received and utilized within the factory. This position has been clearly held by the Tribunal in the case of Maharashtra Seamless Ltd. (supra). Rule 3 of the CENVAT Credit Rules specifically provides that credit of tax paid on any input service, used in the manufacture of intermediate products, by a job worker availing the benefit of exemption specified in Notification No. 214/86-C.E. be allowed. I find that the orders relied upon by the departmental representative has not examined the express provision under Rule 3 of Cenvat Credit Rules or the recent clarification dated 19-1-2010 (supra) issued by C.B.E. & C. in the matter. Therefore, I adopt the principle laid down by the Mumbai Bench of the*

> *Tribunal in the case of Maharashtra Seamless Ltd. v. Commissioner of Central Excise, Raigad and I hold that there is no reason to deny Cenvat credit of security services utilized by the appellant at the premises of the job workers and paid for by the appellant.*

> ***8**. In the circumstances, I hold that the decision in the case of MRF Ltd. (supra) is applicable to the facts of this case wherein this Tribunal has examined the Rule 3 of Cenvat Credit Rule 2004 for availing the credit on the service availed by the job worker under Notification 214/86-CE dated 25.3.1986. Therefore, I do not find any infirmity in the impugned order and the same is upheld. The appeal filed by the Revenue is dismissed.”*

Further, the issue has been examined by the Hon’ble Apex Court in the case of *International Auto Ltd (supra)*, wherein the Hon’ble Apex Court has observed as under:

> ***“6.** We are of the view that the submission of the appellant is correct. The Tribunal appears to have been confused between the manufacture of the final product, namely, excavators and the manufacture of the intermediate product, namely, the floor plate assemblies. The scheme of Modvat permits the person who clears the ultimate final product to take the benefit of the Modvat scheme at the time of clearance of such final product. The manufacturer of the final product, in this case TELCO, would therefore, be entitled not only to adjust the credit on the inputs supplied by it to the intermediate purchaser such as the appellant but also to the credit for the duty paid by the intermediate purchaser on its products. The reliance on the decision in Burn Standard Company Ltd. (supra) by the Tribunal was misplaced. That case has no doubt held that the value of the free inputs were to be included in the final product. In that case, the final product was wagons and the question was whether the items which were supplied*

> *free by the Railway Board to the assessee could be included in the value of the wagons. This Court came to the conclusion that it could. The first distinguishable feature is that this Court in that case was neither concerned with the Modvat scheme, nor with the provisions of Rule 57F(2)(b). Furthermore, the Court was not considering a situation where the question was of the liability of an intermediate product being subjected to excise duty. What was in consideration was the final product, namely, wagons.***"**

7. We also take note of the fact that the adjudicating authority has fell in error by holding that the job workers are clearing finished goods to the principal manufacturer, in fact as per the Annexure-I and the challan, the job workers are clearing the job work goods namely 6-APA Crude and the principal manufacturer is clearing the said goods in Refined form. Therefore, it is a factual error on the part of the adjudicating authority holding that the job workers are clearing finished goods to the principal manufacturer.

8. As the Ld. A.R. failed to give the evidence that the inputs in question were not used in process of manufacturing of the job worked goods. Therefore, we hold that the principal manufacturer is entitled to avail the Cenvat credit on the inputs in question and no penalty is imposable on the appellants. Accordingly, we set aside the impugned order and allow the appeals filed by the appellants with consequential relief, if any.

(Dictated and pronounced in the court)

(Devender Singh)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

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