Customs, Excise & Service Tax Appellate Tribunal

SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/3781,3920/2010

(Arising out of OIA- 25/CE/COMMISSIONER/J&K/2010 dated 31/08/2010, OIA-27-CE-COMMISSIONER-J&K-2009 dated 09/10/2010 passed by the Commissioner (Appeals) of Central Excise-JAMMU & KASHMIR)

M/s Pearl Drinks Limited : Appellant (s)

Vs

CCE & ST- Jammu & Kashmir : Respondent (s)

Represented by:
For Appellant (s) : Shri V. M. Doiphode, Advocate
For Respondent (s): Shri Atul Handa, AR

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

Date of Hearing/Decision: 27.08.2018

ORDER No. A/62846-62847 / 2018

Per : Mr. Anil G. Shakkarwar

Above stated two appeals are taken together for disposal, since, the issue involved in both the appeals is same.

2. The issue involved herein is the quantum of Cenvat credit admissible in respect of central excise duty paid by an 100% EOU claiming benefit of Sr. No. 2 of Notification No. 23/2003-CE dated 31.03.2003.

3. Brief facts of the case are that the appellants were engaged in the manufacture of Pet Preforms. They availed Cenvat credit of entire central excise duty paid on the inputs which were procured by them from 100% EOU where the duty was paid as provided under proviso to Sub-Section
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Section (1) of Section 3 of Central Excise Act, 1944 readwith Sr. No. 2 of the Notification No. 23/2003-CE dated 31.03.2003 for the period from February 2008 to December 2008 and January 2009 to September 2009. Above stated two periods are covered by the above stated two appeals.

4. Heard the Ld. Counsel Shri V. M. Doiphode on behalf of the appellant and Shri Atul Handa on behalf of the Revenue.

5. On hearing both of them, we note that for period from February 2008 to December 2008, Revenue proposed recovery of irregular availment of Cenvat credit to the tune of Rs. 1,21,28,694/- and Cenvat credit of Rs. 7,73,909/- for the period from January 2009 to September 2009. Out of the proposal of denial of Cenvat credit of Rs. 1,21,28,954/-, the demand of Rs. 69,85,771/- was confirmed and out of the demand of Rs. 7,73,909/- entire amount was confirmed. The proceedings culminated into filing of these appeals. We note that the amount confirmed was availed by the appellants which was the entire central excise duty paid by an 100% EOU. The authorities below have invoked provisions of Clause (a) of Sub-Rule 7 of Rule 3 of Cenvat Credit Rules, 2004 wherein there is a specific provision that if the Central Excise Duty is paid in terms of Sr. No. 2 of the Notification No. 23/2003-CE dated 31.03.2003 then the admissible Cenvat credit is 50% of [X *multiplies by* {(1+BCD/100) *multiplied* by (CVD/100)}], where BCD and CVD denote ad valorem rates, in per cent, of basic customs duty and additional duty of customs leviable on the inputs and X denotes the assessable value. We find that the authorities at lower level by

resorting to said provision have correctly arrived at the conclusion that out of Cenvat credit of Rs. 1,21,28,954/- Cenvat credit of Rs. 69,85,771/- was not admissible to the appellants and also credit of Rs. 7,73,909/- was not admissible to the appellants. We therefore do not find any merit in the appeals filed by the appellants. Therefore, both the appeals are dismissed.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

G.Y.