CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

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REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 60174 Of 2019

[Arising out of OIA No. CHD-EXCUS-001-APP-253-18-19 dated 28.12.2018 passed by the Commissioner (Appeals) of CGST, Chandigarh]

International Cylinders P Ltd.
20, Industrial Area, Gondpur
Ponta Sahib, Himachal Pradesh-173025 **: Appellant (s)**

Vs

CCE & ST- Chandigarh-i
Plot No. 19, C.R. Building,
Sector 17-C, Chandigarh-160017 **: Respondent (s)**

APPEARANCE:
Shri Rajesh Gupta, Advocate for the Appellant
Shri Tarun Kumar, Authorised Representative for the Respondent

CORAM : HON'BLE Mr. ASHOK JINDAL, MEMBER (JINDAL)

FINAL ORDER No. 60471 / 2019

Date of Hearing:02.05.2019

Date of Decision:02.05.2019

Per : Mr. Ashok Jindal

The appellant is in appeal against the impugned order wherein cenvat credit availed by them on capital goods has been denied on the ground that at the time of procuring of capital goods, the appellant was availing Area Based Exemption under Notification No. 50/2003-CE dated 10.06.2003.

2. The facts of the case are that the appellant is located in the state of Himachal Pradesh and was availing exemption under Notification No. 50/2003-CE dated 10.06.2003. On 27.11.2013, the said exemption was expired and during the financial year 2013-14.
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The appellant procured certain capital goods between 01.04.2013 to 27.11.2013 and after opting out from the exemption, the appellant avail 50% of the cenvat credit on the said capital goods in terms of Rule 4 (2) (a) of the Cenvat Credit Rules, 2004. The Revenue is of the view that as at the time of procuring the capital goods, the appellant was availing exemption under Notification No. 50/2003-CE dated 10.06.2003, therefore, they are not entitled to avail cenvat credit on the said capital goods. In these set of facts, the proceedings were initiated against the appellant by issuance of the show cause notice. The matter was adjudicated, the cenvat credit was denied. Against the said order, the appellant is before me.

3. The Ld. Consultant appearing on behalf of the appellant submits that while passing the impugned order the adjudicating authority has relied on the decision of Larger Bench of this Tribunal in the case of ***Spenta International Ltd. vs. CCE-2007 (216) ELT 0133 (LB)***, but, he heavily relied on the decision of the Hon'ble Madras High Court in the case of ***Kaleesuwari Refinery Pvt. Ltd. vs. CESTAT-2016 (340) ELT 632 (Mad.)*** to say that they are entitled to avail cenvat credit. He also relied on the decision of this Tribunal in the case of ***CCE vs. Pepsico India Holdings Ltd-2015 (324) ELT -175.***

4. On the other hand, the Ld. AR submits that it is a fact on record that when these capital goods have been procured by the appellant, the appellant was manufacturing only exempted goods. Therefore, for manufacturing exempted goods, any capital goods procured is not entitled for cenvat credit.

5. Heard the parties and considered the submission.

6. I have gone through the proviso to Rule 4 (2) (a) of Cenvat Credit Rules, 2004 which are as under:-

> *"The CENVAT credit in respect of capital goods received in a factory or in the premises of the provider of output service [or outside the factory of the manufacturer of the final products for generation of electricity for captive use within the factory, [or in the premises of the job worker, in case capital goods are sent directly to the job worker on the direction of the manufacturer or the provider of output service, as the case may be]] at any point of time in a given financial year shall be taken only for an amount not exceeding fifty per cent of the duty paid on such capital goods in the same financial year."*

On going through the said provision, I find that if the capital goods have been procured by the assessee, he is entitled to take cenvat credit on the said capital goods to the tune of 50% of the credit in the financial year in which capital goods have been procured and remaining 50% in the next financial year.

7. Further, in terms of Rule 4 of Cenvat Credit Rules, 2004 no cenvat credit shall be allowed on capital goods which are used exclusively manufacture of exempted goods or providing exempted services. In the case in hand after 27.11.2013, the goods manufactured by the appellant became dutiable as the exemption under Notification No. 50/2003-CE dated 10.06.2003 was expired. As per Rule 4 (2) (a) of CCR, 2004 the assessee is entitled to avail cenvat credit in the financial year in which the capital goods have been procured. The said issue has been examined by the Hon'ble Madras High Court in the case of ***Kaleesuwari Refinery Pvt. Ltd.(supra)*** wherein the Hon'ble High Court has framed the following issue:-

> *"Whether in the facts and circumstances of the case denial of cenvat credit on capital goods can be justified especially in view of the fact that the edible oil was subjected to duty in the same financial year in which the subject capital goods were received? And"*

and the Hon'ble High Court observed as under:-

> ***"27.*** *The consequences of giving a different interpretation to the Rule is too obvious. Take for instance a case where the factory receives*

> *capital goods on a particular day, say for instance 1-10-2003. If the goods are dutiable goods on the date of receipt, namely 1-10-2003, the Department agrees that the factory will be entitled to Cenvat credit. Suppose an exemption notification is issued on the date following the date of receipt of capital goods, he will still be entitled to the benefit of Cenvat credit. Therefore, to interpret Rule 4(2)(a) in a manner that will benefit a person, who receives the capital goods on the date, on which, the goods to be manufactured were dutiable, despite the same goods becoming exempted goods on the next day, but to deprive the benefit to a person, who manufactures dutiable goods on the basis of the capital goods received in a particular financial year, would not be a proper interpretation to the Rules."*

8. Admittedly, in the case in hand, the appellant is taken cenvat credit on the capital goods for the same financial year when they were manufacturing dutiable as well as exempted final product, therefore, I hold that the appellant are entitled to avail cenvat credit in terms of rule 4 (2) (a) of CCR, 2004.

9. In view of above, the impugned order is set-aside and allow the appeal with consequential relief, if any.

(Dictated & pronounced in the Court)

(Ashok Jindal)
Member (Judicial)

G.Y.