IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL SOUTH ZONAL BENCH, CHENNAI

Appeal No. E/41389/2018

(Arising out of Order-in-Appeal No. CBE-CEX-000-APP-11-2018 dated 28.3.2018 passed by the Commissioner of GST & Central Excise (Appeals), Coimbatore)

M/s. Anil Fireworks Factory — Appellant

Vs.

Commissioner of GST & Central Excise
Madurai — Respondent

Appearance

Shri S. Ramachandran, Consultant for the Appellant
Shri L. Nandakumar, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)

Date of Hearing :07.12.2018
Date of Pronouncement :10.12.2018

Final Order No. **43070 / 2018**

Brief facts are that during the audit of accounts, it was noticed that the appellant had taken CENVAT credit of ineligible inputs namely fireworks purchased from their other units. The department was of the view that such fireworks purchased by other units and packed with their own products and cleared as a gift pack is not eligible for credit. According to department Rule 16(1) of Central Excise Rules 2002 is to be applied and therefore the goods purchased from other sister concern when being packed, the activity did not amount to manufacture as per

Chapter Note to third schedule to CEA 1944. Such goods do not qualify as inputs and therefore the credit availed is not eligible. Show cause notices were issued proposing to demand the wrongly availed credit on inputs for different periods from 2013 – 14 to 2014 – 15 and May 2015 to December 2015. After due process of law, the original authority confirmed the demand of Rs.16,66,248/- and Rs.9,74,075/- for the respective periods along with interest and also imposed penalties. In appeal, Commissioner (Appeals) upheld the same. Hence this appeal.

2. On behalf of the appellant, Shri S. Ramachandran, ld. consultant appeared and argued the matter. He submitted that the appellant is engaged in manufacture of fireworks. They also purchase fireworks from their sister units and combine different varieties into a single 'gift pack' and are cleared as a single item by payment of excise duty. They availed credit of the excise duty paid on the fireworks that was purchased from outside manufacturers. The department is of the view that there is process of manufacture involved in packing the gift box by combining various firework items and therefore has denied credit. It is submitted by him that appellants included the value of the fireworks purchased from other manufacturers to arrive at the value of gift boxes which were cleared on payment of duty. Therefore, the fireworks purchased from other manufacturers are inputs for the appellants. The show cause notices propose to recover the credit availed on fireworks which

are purchased from outside manufacturers. Since the value of the goods cleared by the appellant (the gift combo boxes) includes the value of the goods which are purchased from outside manufacturers, the appellant is eligible to avail the CENVAT credit. He relied upon the following case laws:-

a. Cello Home Products Vs. Commissioner of Central Excise, Daman – 2012 (284) ELT 52 (Tri. Ahmd.)

b. Manik Machinery Manufacturers Pvt. Ltd. vs. Commissioner of Central Excise, Mumbai – 2016 (339) ELT 334

c. Commissioner of Central Excise Vs. Prime Healthcare Products – 2011 (272) ELT 54 (Guj.)

d. G.S. Enterprises Vs. Commissioner of Central Excise, Jaipur – 2014 (313) ELT 340 (Tri. Del.)

3. The ld. AR Shri L. Nandakumar supported the findings in the impugned order. He argued that since the goods were purchased from other manufacturers and brought into the factory for repacking, such unpacking or repacking does not amount to manufacture and therefore as per Rule 16(1) and (2), the appellants are not eligible for credit.

4. Heard both sides.

5. The allegation is that the appellants are not eligible for credit on the fireworks purchased from their sister concern / outside manufacturers. It is not disputed that the appellants after purchasing the fireworks from other manufacturers are packing it into a single unit / gift boxes along with their own manufactured fireworks. It is also not disputed that the

appellant has included the value of such purchased fireworks in the assessable value of the final product / gift boxes cleared by them. The definition of inputs for the relevant periods read as under:-

> *"(k) "input" means –*
>
> *(i) all goods used in the factory by the manufacturer of the final product; or*
>
> *(ii) any goods including accessories, cleared along with the final product, the value of which is included in the value of the final product and goods used for providing free warranty for final products"*

The definition thus show that not only the inputs that is used for manufacture of final products but also those goods cleared whose value is included in such final product will come within the definition of inputs. Further, all goods used in the factory b y the manufacturer of the final product would come within the definition. This means any goods used by manufacturer within the factory is input. The words used are 'by the manufacturer' and not 'for the manufacture'. The authorities below have erred in interpreting that in order to qualify as inputs, the goods have to be used for manufacture. The said issue has been decided in the case of Manick Machinery Manufacturers P. Ltd. (supra), the relevant portion of which is reproduced as under:-

> "6. I find that the whole concept of Modvat/Cenvat scheme to avoid cascading effect of tax suffered on input. In that stream whatever input is going into final product either directly or indirectly, duty suffered on that input should be set off and only on value addition duty is levied. In the present case the playing cards even though it does not participate directly in the manufacture of final product i.e. spray guns but undisputedly the same is purchased by the appellant and expenditure of the same stands

> absorbed in the cost of the final product which ultimately suffered the duty as a whole, therefore in my considered view the playing cards which is supplied along with final product should be eligible for input credit. The definition of input also clearly suggests that the input need not to be used directly in the manufacture and also not required to be contained in the final product but if it is used even in relation to the final product credit should be allowed. In the present case the playing cards indeed supplied alongwith final product it fulfilled the criteria of inputs, therefore credit cannot be denied of the duty paid on playing cards. Though there are contrary judgments on this issue but comparing the judgments of both the sides, I find that Tribunal's Single and Division Bench in cases *Cello Home products* (supra) and *G.S. Enterprises* (supra) respectively held that items supplied along with final product for sale promotion have been considered as input and Cenvat credit was allowed. In the case of *Prime Health Care Products* (supra) Hon'ble Gujarat High Court on the identical issue also allowed the credit in respect of bought out tooth brush supplied along with tooth paste manufactured by the assessee. The Hon'ble High Court has allowed the Cenvat credit on the tooth brush considering it as input. As regard the judgments relied upon by the Ld. AR, I find that since there is reasoned judgment of the Hon'ble High Court of Gujarat, it prevails over all the decisions given by the Tribunal, therefore following the Hon'ble Gujarat High Court judgment, I am of the considered view that Cenvat credit in respect playing cards supplied by the appellant along with spray guns is admissible. The impugned order is set aside. Appeal is allowed."

6. The invocation of Rule 16 does not appear to be proper in the given set of facts of the case. Rule 16 reads as under:-

> *"RULE 16. Credit of duty on goods brought to the factory. — (1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.*
>
> *(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-*

rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.

[Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.]

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the [Principal Commissioner or Commissioner, as the case may be].”

The said Rule speaks about situation wherein duty paid goods are brought into factory for refine, reconditioned or for any other reason. In the present case, the goods are not brought to the factory but they have been bought by the manufacturer and the value of such goods have been included in the assessable value of the final product. The situation does not give raise to invoke Rule 16(1) at all.

7. In the other decisions relied by the appellant, the very same issue has been considered. After appreciating the facts of the case and the decisions cited by the appellant, I am of the view that the demand cannot sustain and requires to be set aside, which I hereby do. The appeal is allowed with consequential relief, if any.

(Pronounced in court on 10.12.2018)

(**Sulekha Beevi C.S.**)
Member (Judicial)

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