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

E/272/2009

(Arising out of Order-in-Appeal No.28/2009 dated 23.1.2009 passed by the Commissioner of Central Excise (Appeals), Madurai)

M/s. Sundaram Industries Ltd. Appellant

Vs.

Commissioner of Central Excise, Madurai Respondent

Appearance

Ms. Minchu Mariam Punnose, Advocate for the Appellant
Shri S. Govindarajan, AC (AR) for the Respondent

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Hon'ble Ms. Sulekha Beevi C.S., Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of Hearing / Decision: **16.08.2017**

Final Order No. 41667/2017

Per Bench

The issue involved in the above appeal is whether the appellants are liable for payment of 10% of the value of exempted goods cleared by them on the allegation that they have not maintained separate accounts for the common inputs used in the manufacture of dutiable and exempted goods.

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2. The appellants are engaged in manufacture of various rubber products and also manufacture rubber compound which is used in the manufacture of excisable goods captively consumed without payment of duty. They availed credit of duty paid on the inputs used in manufacture of such rubber compound. They were maintaining separate accounts upto 31.3.2005 with regard to the inputs used in the manufacture of rubber compound captively consumed by them and cleared without payment of duty. From 1.4.2005, they intimated the department vide letter dated 31.8.2005 that they will be not maintaining separate accounts and was switching to the system of expunging credit at the time of clearance of rubber compound without payment of duty. A show cause notice was issued for the period 10/2005 to 3/2006 for an amount of Rs.17,44,431/- being the irregularly availed credit. After due process of law, the original authority confirmed the demand along with interest and also imposed penalty. In appeal, the Commissioner (Appeals) upheld the same. Hence this appeal.

3. On behalf of the appellant, learned counsel Ms. Minchu Mariam Punnose submitted that appellant had filed detailed reply to the show cause notice wherein it was stated that although they were not maintaining separate accounts, they were reversing the proportionate credit. The said fact has not been accepted by the department and the demand is raised by

insisting the appellant to pay 10% value of the exempted goods. She submitted that in the appellant's own case, for a different period, the issue stands decided in their favour by the judgment reported in 2014 (301) ELT 87. Further, that the Hon'ble High Court in the case of CCE Vs. CESTAT – 2015 (323) ELT 323 (Mad.) and CCE Vs. ICMC Corporation Ltd. – 2015 (315) ELT 388 (Mad.) has held that the reversal of credit on common inputs used for manufacturing exempted goods would be sufficient compliance of the provisions envisaged in Rule 6(3) of CENVAT Credit Rules, 2004.

4. Following the same, we hold that the demand is unsustainable. The impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Operative portion of the order was pronounced in open court)

(**Madhu Mohan Damodhar**)
Member (Technical)

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

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Customs, Excise & Service Tax Appellate Tribunal

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