CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 53868 of 2018 (SM)

[Arising out of Order-in-Appeal No.78/2018 dated 28.03.2018 passed by the Commissioner (Appeals), Central Excise & Service Tax, Dehradun]

M/s. Canadian Speciality Vinyls **Appellant**
49, Ist Floor, Rani Jhansi Road,
Delhi- 110 055.

VERSUS

Commissioner of Central Goods and
Service Tax, Customs and Central Excise, **Respondent**
E-Block, Nehru Colony, Haridwar Road,
Dehradun (Uttarakhand).

APPEARANCE:

Shri Rajesh Chibber, Advocate for the appellants.
Shri K. Poddar, Authorised Representative for the respondent/Department.

CORAM: HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51302 of 2019

DATE OF HEARING: 02.05.2019
DATE OF DECISION:09.10.2019

ANIL CHOUDHARY:

The appellant – Canadian Speciality Vinyls is engaged in the manufacture of PVC films, sheets and coated textiles falling under Chapter 3920 and 5903 of the first Schedule to the Central Excise Tariff Act, 1985. They had a unit at plot 436-438 in Shree Developers Industrial Estate, Mahuakheraganj, Kashipur (Uttarakhand) and were availing 'Area Based Exemption'. The appellant-firm set up another unit adjoining the earlier one for manufacture of the same products, and applied for registration on 2.12.2013 in the prescribed form-A. The appellant was granted registration and they started production, and were paying duty and also availing cenvat credit. On post verification, superintendent inspected the premises and reported that the appellant had another unit adjoining a new unit, availing Area Based Exemption, the partners of the said two units are the same and thus, the two units were not entirely separate. Further, the raw materials and finished goods were also the same for both the units. It appeared to Revenue that there will be mis-use of the Area Based Exemption, and accordingly, by order dated 16.09.2014, the Asstt. Commissioner of Central Excise, Haldwani Division was pleased to revoke the registration of the new unit.

2. The unit was asked by the Range Superintendent vide letter dated 25.09.2014, to give details of the month wise production, clearance & duty payment of the finished goods. Vide letter dated 16.10.2014, the party submitted month-wise production, clearance, cenvat credit availment & duty payment figures of the finished goods from Jan. 2014 to Oct. 2014.

3. The party submitted ER-1s manually in the old format in the Range office on 11.11.2014. The total value of goods cleared by them for the concerned ten months (Jan. 14 to Oct. 14) added up to Rs. 5,03,07,016/-, total duty amounting to Rs. 60,85,685/- (as per above mentioned ER-1s) inclusive of duty on scrap. As per the ER-1s, the party had manufactured and cleared 425802.77 MT of the final products i.e. PVC films and sheetings. Only Rs. 30,000/- was paid by PLA, vide challan No. 51353 dated 31.03.2014,and rest of the duty was paid by them by way of utilisation of cenvat credit, appeared to be too high indicating that the party had inputs lying in balance at the time of closure of the unit.

4. The Range Superintendent asked for further additional information for updating the closing balance of the inputs lying at the time of closure of the manufacturing activity. It further appeared to Revenue that as the appellant had availed cenvat credit on inputs, they were required to reverse the cenvat credit on the inputs lying in stock, treating it at par with the goods removed as such, as provided under sub-rule 3(5) of CCR Rules, 2004, at the time of closure of their unit. As such information of the closing balance of inputs were not provided by the appellants, the Revenue applied *SION norms* (Standard Input Output Norms, which has been specified by DGFT for the purpose of foreign trade), for ascertaining the closing stocks of inputs. On the basis of information submitted by the appellant as regards availing of cenvat credit on inputs by their letter dated 16.10.2014, applied the SION norms ratio, as published by DGFT in Foreign Trade Policy 2009-2014. Applying the FIFO basis, inputs viz. PVC resins and PVC films, on which total credit of Rs.18,31,533/- was taken including cenvat credit of Rs.9,340/- on HDPE paper (not mentioned in SION) appeared to be the amount to be reversed as calculated in Annexure-D to show cause notice. As per the appellant's letter dated 16.10.2014, they have taken total credit on inputs at Rs.65,46,495/- and total credit utilised as per the ER-I amounts to Rs.60,58,493/-. Thus, total credit lying in balance (unutilised) at the time of closure, works out at Rs.4,88,002/- whereas in the last ER-I for October, 2014, the cenvat credit balance has been shown at Rs.7,43,606/- which appeared to be incorrect. Further, the appellant had deposited an amount of Rs.30,000/- by challan dated 30.03.3014 and utilised an amount of Rs.27,195/- (out of the same – PLA) towards payment of duty, leaving balance of Rs.2,805/-from the total credit duty liability). It further appeared to Revenue that under the provisions of Rule 3(5) of CCR, 2004, inputs have

to be removed under cover of an invoice. It further appeared that the appellants have contravened the provisions of Rule 3 (5), and thus, an amount of Rs.13,40,726/- is liable to be recovered under Rule 14 & 15 of CCR read with Section 11 AC of the Central Excise Act, along with interest. The show cause notice was issued on 5.11.2015.

5. The show cause notice was adjudicated on contest and the proposed demand was confirmed with interest and further equal amount of penalty was imposed under Rule 15 of the CCR, read with Section 11 AC of the Act.

6. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) on the ground that, under the facts and circumstances, there being admittedly no removal of inputs as such, no duty/cenvat credit could be demanded. Further, the appellant had relied upon the ruling of the Hon'ble Supreme Court in **Dai Ichi Karkaria – 1999 (112) ELT 353,** wherein it was held that the credit taken cannot be asked to be reversed on goods becoming subsequently exempt from duty. The ld. Commissioner (Appeals) was pleased to reject the appeal observing that the registration of the appellant was revoked. Therefore, the unit had to be clear the inputs in stock under Rule 3(5), by debiting the duty equal to the credit taken. It is not the case of a running unit manufacturing the goods, as a going concern, the final products of which became exempt in due course. It is also observed that the relevant Rule is Rule 11 of CCR and not the Rule 3(5) of CCR.

7. Being aggrieved, the appellant is before this Tribunal.

8. Heard the parties.

9. It is an admitted fact that the appellants have not removed any inputs as such. Rule 3(5) applies or provides for reversal of duty on inputs, which

are removed as such. Thus, I hold that the show cause notice is mis-conceived as the same is issued alleging that Rule 3(5) of CCR is applicable. Further, I find that SION norms are not applicable in the facts and circumstances. It is not the case of the Revenue that the appellants have not maintained proper records of receipt of inputs and its utilization. Under the provisions of Rule 11 of CCR, (which is not invoked in the show cause notice), the assessee is required to reverse the cenvat credit lying unutilized in its books of accounts, on the date, its final product/output become exempt. Accordingly, the appeal is allowed and the impugned order is set aside. The appellant shall be entitled to consequential benefit including the refund of pre-deposits made, as per Rules.

(Pronounced on 09.10.2019).

(Anil Choudhary)
Member (Judicial)

Ckp