CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 50645 of 2020-SM

(Arising out of order-in-appeal No. IND-EXCUS-000-APP-213-19-20 dated 24.01.2020 passed by the Commissioner (Appeals), Customs, Central Goods Service Tax & Central Excise, Indore (M.P.)

M/s Unichem Laboratories Ltd., **Appellant**
Plot No. 197, Sector-I
Pithampur, Dhar (M.P.)-454775.

VERSUS

Commissioner, Central Goods and Service Tax, Central Excise & Customs **Respondent**
Manik Bagh Palace, Post Box No. 10
Indore, M.P.-452001.

APPEARANCE:

Shri Rajiv Srivastava, Advocate for the appellant
Shri Mahesh Bhardwaj, Authorised Representative for the respondent

CORAM:

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

FINAL ORDER NO. 51862/2021

DATE OF HEARING/DECISION: 23.09.2021

ANIL CHOUDHARY:

The issue in this appeal are –

(i) Whether transportation charges for transfer of finished goods/ semi finished goods from appellant unit to the other unit of the same appellant company, are entitled to cenvat credit, under Cenvat Credit Rules, 2004; and

ii) Whether the appellant have rightly taken cenvat credit on the installation of 'special doors' for manufacture of drugs under 'good manufacturing practices'.

2. Brief facts of the case are that the appellant is engaged in the manufacture of Pharmaceutical Products (API), (Active Pharmaceutical Ingredients). Appellant is availing credit of input, capital goods and input service and clearing their finished goods on payment of duty.

3. Show cause notice dated 24.01.2019 was issued invoking extended period of limitation for the period 2013-14 to 2016-17 on the following five issues.

(a) Less payment of duty on goods sold to sister concern by following the provision of Rule 8 of the Valuation Rule, 2000 – Demand was for Rs.87,95,178/- (including cess).

(b) Credit availed on doors and windows – Rs. 1,22,956/- (including cess)

(c) Credit availed on annual maintenance charges paid to MPAKVN – Rs.1,46,115/-.

(d) Non-payment of duty on scrap cleared from the factory – Rs. 1,25,370/-.

(e) Credit availed on outward freight paid for good cleared to sister concern – Rs. 1,77,610/-.

4. The appellant contested the show cause notice by filing their reply dated 15.03.2019 as well as further written submission at

the time of personal hearing on 05.09.2019. The Adjudicating Authority dropped the demand with regard to cenvat credit on maintenance charges and as regards non-payment of duty on scrap cleared [item No. (c) and (d) above]. The demand with respect to the other three issues was confirmed alongwith penalty under Rule 15 of Cenvat Credit Rules, read with Rule 11AC(1)(c) of the Act.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals) who was pleased to confirm the demand of disallowance of cenvat credit for doors and windows amounting to Rs. 1,22,956/- and credit taken on outward freight Rs.1,77,610/-. However, as regards the allegation of duty short paid (alleging under valuation) for the goods sold/ cleared to sister concern, demand of Rs. 87,95,178/- was remanded back to the Additional Commissioner.

6. Being aggrieved, the appellant company have filed the present appeal with regard to upholding of the demand of cenvat credit with regard to 'doors and windows' and 'outward freight'.

7. Learned Counsel Shri Rajiv Srivastava appearing for the appellant urges the following grounds/ submissions, that these are special doors/ windows, which are required to keep the manufacturing premises, hall/ room dust free, as the appellant is manufacturing active drugs / pharmaceutical ingredients for human consumption. Keeping the premises dust free, is required to ensure the good quality of the finished goods, and essential by way of Good Manufacturing Practices (GMP).

7.1. Learned Counsel further relies on the Board Circular No. 943/4/2011-CX dated 29.04.2011. He further relies on the following ruling in the case of:-

(i) Ion Exchange (I) Ltd. vs. CCE -2018 (12) GSTL 392 (Tri. Ahmd.)

(ii) Alliance Global Services IT India (P) Ltd. vs. CCE &ST -2016 (44) STR 113 (Tri. Hyd.)

(iii) Infosys Ltd. vs. CST, Bangalore -2015 (37) STR 862.

7.2 As regards GTA services availed and credit taken on goods transferred to sister concern , learned Counsel urges the following grounds and submissions as well as refer to the documents on record:-

(a) Purchase order no. 4620064802 issued by the Goa unit of the company, to the Pithampur unit of the company, for the supply of goods for captive consumption.

(b) Stock Transfer invoice no. 7117100050 dated 16.06.2017 issued by the Pithampur unit to Goa unit (this invoice was attached as annexure to the notice). The invoice contains the details of the order number. The invoice contains the transporter name and LR number – Safexpress Pvt. Ltd. and LR No. 53000917.

(c) Delivery challan cum gate pass showing the receipt of the goods by the Goa unit.

(d) LR No. 53000917 of Safexpress Pvt. Ltd. – The freight shown in the LR is NIL. It thus implies that the freight payment was done by Pithampur Unit. Therefore the delivery to the Goa Unit was free of cost. Hence Credit is admissible.

7.3 Learned Counsel further urges that the invocation of extended period of limitation is also bad as the credit with respect to doors and windows is allowable in view of the clear interpretation of Rule 2(k) of Cenvat Credit Rules, read with Board Circular dated 29.04.2011 and also in view of the precedent rulings referred hereinabove. Further, in the show cause notice, it is admitted fact that the availment of credit was reflected in the record and books of accounts maintained by the appellant in the ordinary course of business. The appellant have filed ER-1 return regularly. The appellants' unit come under LTU (large taxpayer unit) and are paying excise duty of more than several crores annually. Further the issue involved is wholly interpretational in nature and there is no contumacious conduct or suppression of facts or fraud on the part of the appellant. Thus, the show cause notice and the impugned order is fit to be set aside on this ground alone. Admittedly, the appellant have incurred the GTA charges for transfer of their goods to the sister concern (owned by the same company), and such transport charges form part of the cost of goods of the appellant. It is further urged that in the facts and circumstances, no penalty is imposable.

8. Learned Authorised Representative Shri Mahesh Bhardwaj relies upon the findings in the impugned order.

9. Having considered the rival contentions, I hold that the appellant is entitled to cenvat credit on the doors and windows, which are admittedly essential for manufacture of finished goods of the appellant, by way of goods manufacturing practices. Any input purchased by the manufacturer which are used in the factory for the manufacture of final products, are allowable as inputs, whether it forms part of the finished goods or not. Admittedly, the doors and windows have been used in the factory of the appellant for manufacture of good quality drugs. Accordingly, I hold that cenvat credit is allowable on the doors/window.

9.1 So far cenvat credit on GTA services is concerned, the appellant have demonstrated that they have cleared goods to their sister concern by charging duty on the value of the goods (cost plus, 110% on cost) as per Rule 8 of Central Excise Rules, and such goods have admittedly been received in the other unit. Further, it has been demonstrated in the consignment note, they have mentioned the amount payable towards freight is zero. Thus, admittedly appellant unit have incurred the transport charges for clearance of their finished goods, which has formed part of their cost, as per the arrangement between them and their sister concern. Admittedly, the receiving unit at Goa also manufacture excisable goods which are also cleared on payment of duty. Admittedly, both the units are under the same company, and the situation is wholly Revenue neutral, as the output duty of the appellant unit at Pithampur, is the input of their Goa unit. Accordingly, I hold that the appellant is entitled to cenvat credit of GTA service under Rule 2(l) of Cenvat Credit Rules, 2004.

10. Thus, the appeal is allowed and the impugned order is modified, as regards the issue involved in this appeal.

(Operative portion of the order pronounced in open Court).

(Anil Choudhary)
Member (Judicial)

Pant