CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. – IV

Excise Appeal No. 51994 of 2016 [DB]

[Arising out of Order-in-Original No. 26/PR.COMMR/IND/CEX/2016 dated 29.03.2016 passed by the Principal Commissioner of Central Excise, Customs & Service Tax, Indore]

M/s. Advance Home & Personal Care Ltd. **...Appellant**
Plot No. 34-39, Sector-II,
Industrial Area, Pithampur,
Madhya Pradesh

VERSUS

Commissioner of Customs, Central Excise
& Service Tax, Indore **...Respondent**
Post Box No10, Manik Bagh Road,
Manik Bagh Palace, Indore,
Madhya Pradesh - 452001

APPEARANCE:
None for the Appellant
Shri Manish Kumar Chavda, Authorized Representative for the Respondent

CORAM:
HON'BLE DR. RACHNA GUPTA, MEMBER (JUDICIAL)
HON'BLE MRS. HEMAMBIKA R. PRIYA, MEMBER (TECHNICAL)

DATE OF HEARING: 13.02.2024
DATE OF DECISION: 13.02.2024

FINAL ORDER No. 55128/2024

DR. RACHNA GUPTA

None is present for the appellant. Learned DR has brought to the notice the warning given in order dated 29.11.2023. The order is perused. It reads as follows:

> *"Learned authorized representative appearing for the Department states that the appellant is not running its business from the registered premises and it has been sold to some other person. In this view of the matter, the appeal would be listed for hearing on February 13, 2024. It is made clear that the appeal may be decided on merits even in the absence of the appellant."*

In view thereof, we have proceeded for disposal of appeal on merits after hearing the submissions on behalf of the department.

2. Learned Departmental Representative has mentioned that the appellant has claimed Cenvat credit of duty paid on the inputs for manufacturing the final product. However, the final product was manufactured in some other premises i.e. in Uttarakhand and the inputs had never come in the premises of the appellant in Pithampur, Madhya Pradesh but have directly gone to the other unit in Uttarakhand. Relying upon Rule 4(5)(a) of Cenvat Credit Rules, 2004, learned Departmental Representative has mentioned that there is no infirmity in the order while denying the eligibility to the appellant unit in Pithampur to avail the Cenvat credit of duty paid on the inputs used for manufacture of its final product in appellant's Uttarakhand unit. The order is accordingly prayed to be upheld and appeal is prayed to be dismissed.

3. Having heard. We have perused the appeal memo and its record.

4. We observe that the appellant M/s. Advance Home and Personal Care Ltd., Pithampur, Madhya Pradesh is engaged in manufacture of Detergent Cake and Powder. The appellant is also availing the facility of Cenvat credit of duty paid on inputs, capital goods and input services used in or in relation to the manufacture of their final products. The appellant had informed the Deputy Commissioner of Central Excise, Pithampur about getting the product manufactured at its another unit namely, M/s. Advance Home & Personal Care Ltd., Raipur, District Haridwar in Uttrakhand on job work basis. It was mentioned that the unit in Uttarakhand is

entitled for area based exemption from payment of duty on goods manufactured and cleared by them and as such the facility of Cenvat Credit was not available to the said job worker. Accordingly, the appellant has claimed the Cenvat credit of duty paid on inputs from which the final product was manufactured in Uttarakahnd. Department has denied the eligibility of the appellant. Accordingly, vide show cause notice No. 24764 to 766 dated 21.11.2013, Cenvat credit amounting to Rs.77,27,216/- taken improperly during the period November 2012 to April 2013. Cenvat credit of Rs.21,14,959/- taken on the strength of unspecified documents for the purpose availment of Cenvat credit. In addition Central Excise Duty amounting to Rs.5,56,670/- involved on the goods which have been shown to be exported but no proof has been submitted has also been proposed to be recovered. Penalty is simultaneously also proposed to be imposed upon the appellant. The said proposal has been confirmed vide the order under challenge except that the demand of Rs.4,24,348/- has been dropped.

5. We have taken into consideration the submissions as made by learned Departmental Representative (already recorded above). We have seen the reply of the appellant- assessee in its defence, as placed on record. It has mainly been contended therein that based on certain circulars of the department, input may be sent to the job worker directly from the factory of the raw material supplier and the credit is available when the process goods received back from the job worker. Accordingly, we observe following to be the admitted facts:

(i) The appellant at Pithampur, Madhya Pradesh is the manufacturer of Detergent Cake & Powder.

(ii) The goods were sent by the said manufacturer to its unit in Uttarakhand though considering the said unit as its job worker.

(iii) The inputs were never received by the appellant in Madhya Pradesh.

(iv) The final product was manufactured by its another unit in Uttarakhand.

(v) The goods manufactured in Uttarakhand were directly exported from Uttarakhand.

6. Appellant's case is that the unit in Uttarakhand was a job worker who was not eligible to take Cenvat credit which is why appellant at Pithampur has taken the Cenvat credit of the duty paid on inputs. Department has relied upon Rule 4 of Cenvat Credit Rules precisely sub rule (5)(a) and sub rule (6) thereof. We observe from the order under challenge that the adjudicating authority has meticulously examined those rules and has concluded as follows:

> *"20. It is thus clearly seen from the above position of law as stood at the time of present dispute that cenvat credit was available immediately on receipt of inputs under rule 4(1) of CCR. 2004. In other words, mandate of Cenvat Credit Rules was that cenvat credit on input was available only when the same were received in the factory of the manufacturer. There was no other provision stipulated in it, barring rule 3(1) of CCR, 2004, which allowed credit on input if not received in the said factory. In terms of rule 3(1) ibid, duties on inputs used in the manufacture of intermediate products by a job-worker availing benefit of exemption under Notification No. 214/86 - CE dtd 25.03.86 and*

> *received by a manufacturer for use in or in relation to manufacture of final products, is eligible for cenvat credit. However, in the instant case, it is a fact on record and not disputed by the Noticee that the inputs sent to job-worker never returned to the factory of the Noticee and hence provisions of rule 3(1) ibid are not applicable in the present case. Therefore, reading the provisions of rule 4(5)(a) harmoniously with the provisions of rule 4(1) and rule 4(6) ibid, it is clear that the cenvat credit on inputs (as received in the factory of manufacturer as per rule 4(1) ibid) was allowable even if the same (as such or after being partially processed) were sent to job-worker provided either that the goods were received back in the factory of manufacturer within 180 days of their being sent to job- worker or were cleared from the premises of the job-worker without bringing back in the factory of manufacturer (after getting the necessary permission). In other words thus, what could have been sent to job-worker under above provision were only those inputs (as such or after being partially processed) which were infact received by the manufacturer who has taken credit on such inputs on their receipt. Accordingly, I find that the permission granted by the jurisdictional Dy. Commissioner of CEx to the Noticee to clear the finished goods from the premises of the job-worker under rule 4(6) of CCR, 2004 was correct, which was subject to the condition that the same will not be applicable for the goods directly sent to job-worker from the supplier's end. This permission is also upheld by the Commissioner (Appeals) vide OIA dtd 25.09.2012 with an additional clause that such permission stands granted subject to following of the provisions of rule 4(5)(a) ibid."*

7. We are also of the opinion that in terms of Rule 4(5)(a) of Cenvat Credit Rules, 2004 to be eligible to avail Cenvat credit on inputs, the manufacturer should have received the inputs with him before sending it to the job worker and job worker should have either reprocessed, reconditioned, repaired or had manufactured the intermediary product and should send it back to the principle manufacturer. This is not the fact of the present case. Apparently and admittedly, the goods from the said job worker in Uttarakhand

did not come back to the manufacturer in Madhya Pradesh. The condition for availment of Cenvat credit that the input should have returned from the job worker in 180 days also stands un-complied with.

8. Resultantly, we do not have any reason to differ from the above observations. The circulars etc. as relied upon by the appellant also clarifies that the Cenvat credit of duty on inputs sent to job worker shall be available when the processed goods are received back from the job worker. As already observed above that admittedly the goods have not been received back from the job worker. Finding no infirmity in the order under challenge, we uphold the same. Department is required to verify the compliance of the conditions subject to which the demand of Rs.4,24,348/- was being dropped. As a consequence of above discussion, the appeal stands dismissed.

[Dictated and pronounced in the open Court]

(DR. RACHNA GUPTA)
MEMBER (JUDICIAL)

(HEMAMBIKA R. PRIYA)
MEMBER (TECHNICAL)

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