IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. IV

Appeal No. E/79,256/2012-EX(SM)

[Arising out of Order-in-Appeal No. IND/CEX/000/APP/375&376/2011 dated 22.10.2011, by the Commissioner of Customs, Central Excise & Service Tax (Appeals), Indore].

M/s. Malwa Sahkari Shakkar Karkhana Ltd. **....Applicants**

Vs.

C.C.E. Indore **....Respondent**

Appearance:

Letter from the Appellant to decide on merits
Shri R.K. Mishra, DR for the Respondent

CORAM:
Hon'ble Shri V. Padmanabhan, Member (Technical)

Date of Hearing: 04.01.2017

FINAL ORDER NO.50221-50222/2017-EX(SM)

Per V. Padmanabhan:-

The present appeal is filed against the order in appeal dated 22.10.2011 passed by the Commissioner (A) Indore. The appellant is a co-operative sugar unit engaged in the production and clearance of sugar and molasses falling under chapter 17 of the Central Excise Tariff Act. The dispute pertains to the crushing season of 2000-01 and 2001-02. The appellant cleared white as well as brown sugar under the cover of invoice at nil rate of duty availing the SSI Exemption number 08/03-CE dated 01.03.2003. One of the conditions of the notification is that no Cenvat Credit should be availed on input of capital goods in terms of condition no. 2 of the notification. The Department noticed that the appellant had availed Cenvat Credit on capital goods to the extent of 15,317/-. The Revenue took the view that on account of availing Cenvat Credit the benefit of SSI Exemption will not be available. The appellant paid the Central Excise duty involved to the extent of Rs.53,702/- under protest and subsequently filed the claim of refund. The refund claim was rejected both by the original adjudicating authority as well as the Commissioner (A). Subsequently, the appellant chose to reverse the entire Cenvat Credit availed on capital goods and now in the present appeal submit that they may be extended the benefit of notification no. 8/2003.

2. With the above background, I heard Shri R.K. Mishra, Ld. DR for the respondent. The appellant has submitted a letter with a request to decide both the appeals on merits on the basis of the appeal filed. Two appeals have arisen out of the same issue:

i) Appeal no. E/79/12 has been filed requesting for refund of Rs.15,317 for the reason that the benefit of SSI exemption already stands rejected and refund of Rs.53,702/- has also been rejected.

ii) The second appeal no. E/256/2012 challenged the rejection of refund of the above amount.

3. Since the two issues are connected and have been decided by the same impugned order I propose to decide both the appeals through this common order.

4. One of the conditions for allowing the benefit of SSI notification no.8/2003 dated 13.08.2003 is that no Cenvat Credit on

inputs / capital good should be available. The appellant initially availed Cenvat Credit on capital goods to the extent of Rs.15,317/-, however have reversed the same. Once the credit availed has been reversed it is to be considered as ab initio not availed as held by the Hon'ble Supreme Court of India in the case of ***Chandrapur Magnet Wires (P) Ltd. Vs. CCE Nagpur 1996 (81) ELT 3 (SC).*** In the light of t he above decision of the Apex Court, the appellant will be eligible for the SSI benefit under notification no. 8/03.

5. Now on the portion of the rejection of refund claim to the extent of Rs.53,702/-. This refund claim for this amount stands rejected by Revenue by taking the view that the appellant is not entitled to SSI benefit. In view of my observation above, since the appellant will be entitled to the SSI benefit, the refund for the above amount will be admissible on merits. However, the amount will be paid subject to satisfaction of all the conditions prescribed in section 11B.

5. In view of the above, both the appeals are allowed.

[Dictated and Pronounced in the open Court]

(V. Padmanabhan)
Member (Technical)

Bhanu