CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-II

Date of hearing/decision: 02.06.2017

Appeal No. E/50599/2017-EX[SM],E/50600/2017EX[SM]
[Arising out of the Order-in-Appeal No.BHO-EXCUS-001-APP-517 & 518/16-17 dated 20/12/2016, passed by the Commissioner, Bhopal (Appeals) Central Excise, Customs & Service Tax,Bhopal (MP)

Panasonic Energy India Co. Ltd .... Appellant

Vs.

CCE,Indore (MP) ... Respondent

Appearance:

Present Shri Saurabh Dixit, Advocate for the appellant
Present Shri G.R. Singh, AR for the respondent

Coram: Hon'ble Mr.Ashok K. Arya, (Technical Member)

FINAL ORDER No. 53680/2017
Per Ashok K. Arya :

1. *M/s Panasonic Energy India Company Ltd* is in appeal against Order in Appeal No. 517 and 518/16-17 dated 20.12.2016 whereunder inter alia Cenvat credits amounting to Rs. 11,96,541/- and of Rs. 42,993/- hav been disallowed.

2. The brief facts are that:-

i. The appellant manufactures and sells/exports dry battery cells.

ii. During manufacturing such goods, the appellant uses base paper as well as blister PVC films (as packing material to cover cells).

iii. The appellant procured base paper and blister PVC films and exported as such under LUT/bond procedure without reversing corresponding Cenvat credit.

iv. The Department's stand is that appellant is not entitled to Cenvat credit of the duty paid on such goods, if they have been exported as such by the appellant.

v. Two show cause notices were issued to the appellant and same were adjudicated by the Order in Original No. 06 dated 27.05.2016 and Order in Original No. 122/ADC/CEX/IND/2015-16 dated 24.2.2016 confirming the respective demands of Cenvat credits.

vi. The appellant went in appeal before the Commissioner (Appeals) who sustained both Orders in Original vide the impugned order in appeal.

vii. The appellant is now in appeal before the Tribunal.

3. After having considered the facts of the case and the submissions of both the sides given by the Ld. Counsels, Shri Saurabh Dixit for the appellant and Shri G.R. Singh, for Revenue, it appears that the subject matter is covered by the Instructions given in Central Excise Manual of CBEC, where Chapter 5 deals with Cenvat credit. In para 3.4 of the said Chapter 5 it is mentioned that;-

> *There is no bar for a manufacturer to remove the inputs or capita*l goods *as such for export under bond.*

3.1. Further CBEC has issued classifications vide F. No. 345/2/2000-TRU dated 29.08.2000 wherein para 8 observes as under:

> 8. Explanation to Clause (b) of sub-rule (1) of Rule 57AB refers to payment of appropriate duty of excise if the inputs of capital goods are removed as such from a factory. It has been pointed out that there may be a situation where the input or capital goods are exported. Doubt has been expressed whether such export clearances have to be made only on payment of duty. In this context it is clarifies that under the excise procedures, a manufacturer can export the goods under bond without payment of duty. This is a facility that is available to the manufacturer under the excise procedure. In such case, the appropriate duty of excise that is payable is 'nil'. Therefore, there is no bar for a manufacturer to remove the inputs or capital goods for export under bond within the Explanation referred to above.

3.2. For similar facts the Tribunal in the case of *Videocon International Ltd. Vs Commr. Of Ex.,Vadodara-II 2009 (235) ELT 135 (Tri. Ahd.)* observes as under:-

> **3.** We have considered the order-in-appeal and the arguments advanced by both the sides. We feel that it would be futile to go into the merits of the order in view of the letter issued by the Board F No. 345/2/2000-TRU, dated 29.8.2000, which has been cited by the Commissioner (Appeals). The Commissioner (Appeals) has not followed the letter on the ground that under Rule 19, only excisable goods can be exported under bond. Now, the law is well settled that if there is a circular beneficial to the party that has to be given effect to in view of the judgment of the Hon'ble Supreme Court in *Collector v. Dhiren Chemical Inds. Ltd.* reported in 20002 (139) E.L.T.3 (S.C.). We also find that in the Central Excise Manual published by the CBEC also it has been specifically stated that there is no bar for a manufacturer to remove the inputs or capital goods as such for export under bond. In view of the Board's letter and the Manual providing this benefit, we feel that there is no need to go into issues and accordi9ngly the appeal is allowed with consequential relief to the appellants.

3.3 Considering the instructions given in the CBEC's Manual of Instructions mentioned above and CBEC's Circular F No. 345/2/2000- TRU dated 29.08.2000 given above and the Tribunal's decision (supra) the appellant is entitled to Cenvat credit for the goods exported as such.

4. In the result, the impugned order is set aside and appeal allowed with consequential relief if any, to the appellant.

[Order dictated and Pronounced in the open court]

(Ashok K. Arya)
Member (Technical)

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