IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. I

DATE OF HEARING : 15/06/2017.
DATE OF DECISION : 15/06/2017.

Excise Appeal No. 53835 of 2014

[Arising out of the Order-in-Original No. JAI-EXCUS-002-COM-118-13-14 dated 25/03/2014 passed by The Commissioner of Central Excise, Jaipur.]

CCE & ST, Jaipur – II Appellant

Versus

M/s Rose Zinc Ltd. Respondent

Appearance

Ms. Suchitra Sharma, Authorized Representative (Jt. CDR) – for the appellant.

Ms. Rinky Arora, Advocate – for the Respondent.

CORAM :**Hon'ble Shri Justice Dr. Satish Chandra, President**
Hon'ble Shri B. Ravichandran, Member (Technical)

Final Order No. 53974/2017 Dated : 15/06/2017

Per. B. Ravichandran :-

The Revenue is in appeal against order dated 25/03/2014 of Commissioner of Central Excise, Jaipur – II. The respondents are engaged in the manufacture of brass cast bars, unwrought zinc ingot, zinc Sulphate micronutrient, zinc oxide etc. which are liable to Central Excise duty. They were also availing credit of duty paid of inputs in terms of Cenvat Credit Rules, 2004. The dispute in the present case relates to eligibility of the respondent for exemption to zinc Sulphate manufactured and cleared by them during the period January 2007 to 08/10/2007. The zinc Sulphate which was liable to Central Excise duty was exempted vide Notification 13/2009-CE (NT) dated 03/06/2009 issued in terms of Section 11C of the Central Excise Act, 1944. The notification is for retrospectively covering this period. One of the conditions for such exemption is that the Cenvat credit equivalent to the inputs attributable to zinc Sulphate, manufactured and cleared by the assessee, is reversed. The Original Authority in the proceedings held that the respondents are eligible for the said exemption as they have fulfilled the condition as mentioned in the proviso of the said notification.

2. Aggrieved by this, the Revenue is in appeal. Two main issues were raised by the Revenue. The first one is relating to the eligibility of the respondent for the said exemption as it is contended that the reversal of credit is with reference to another proceedings which are still pending in appeal with the Tribunal. The reversal was made under protest. In such situation, the benefit of the above notification cannot be extended to the respondent. Secondly, the quantification of proportionate credit has not been properly made. The inputs received during the impugned period alone is considered, whereas the credit attributable to the inputs used in the manufacture of zinc Sulphate should be considered for reversal. Further, no detailed

verification appears to have been made to quantify the proportionate credit as the unit was closed during the material time.

3. The learned Counsel for the respondent submitted that they have fulfilled the condition of the said notification. They are aware that even if they succeed in the other proceedings they cannot take the credit on inputs attributable to zinc Sulphate as the same will be violation of condition of the above said exemption notification. The learned Counsel categorically stated that the assessee will not be violating the provisions of the said notification, as in such case the exemption itself will be denied.

4. We have heard both the sides and perused the appeal records. We find, on the legal principles examined by the Original Authority, the respondents are rightly eligible for the exemption under the said notification. The credit attributable to the inputs used for zinc Sulphate have been reversed and as verified by the Jurisdictional officer, the Original Authority gave his finding. However, the point raised by the Revenue regarding correctness of the quantification may require re-verification as the method followed to arrive at proportionate credit appears to be not correct. It is not the date of receipt of inputs, which is relevant to calculate the proportionate credit. The credits, irrespective of the rate of receipt of inputs, attributable to inputs used in the manufacture of zinc Sulphate are to be reversed, in proportion. This aspect may be re-verified and confirmed by the jurisdictional

authorities. Except for this modification, we find no merit in appeal by the Revenue and accordingly the same is dismissed.

(Order dictated and pronounced in the open court.)

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

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