

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

Excise Appeal No. 55802 of 2013

[Arising out of Order-in-Appeal No 74/CE/DLH/2012 dated 29.10.2012 passed by the Commissioner (Appeals), Central Excise & Service Tax, Delhi]

M/s. S & S Convergents Pvt. Ltd.

Appellants

Vs.

**Commissioner of Central Excise
New Delhi**

Respondent

Appearance:

Shri Ravinder Singh, Consultant for the Appellants
Shri K Poddar, DR for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.08.2017

FINAL ORDER NO. 56392 /2017

Per Ashok Jindal:

The appellant is in appeal against the impugned order wherein appellants was asked to reverse Cenvat Credit on capital goods destroyed in fire. The appellant is manufacturer of excisable goods. On 3.8.09, the appellant informed the Central Excise department that on 31.7.09 at 9.15 PM, a fire took place in the factory premises and in fire the capital goods had been destroyed. The capital goods in

question were purchased by the appellants and from December, 2007 to May, 2008 they were put to use for manufacturing of their final product. As the capital goods has been destroyed in fire, therefore the show cause notice was issued to the appellant to reverse the Cenvat credit availed on these capital goods which had been destroyed in fire. Matter was adjudicated and Cenvat credit was denied to the appellant on capital goods destroyed in fire. Aggrieved from this order, appellant is before me.

2. Learned counsel relied on the decision of Hon'ble Gujarat High Court decision in the case of **CCE vs. Biopac India Corporation Ltd. [2010 258 ELT 56 (Guj)]** to say that they are not required to reverse the Cenvat credit under Rule 3(5) of Cenvat Credit Rules, 2004 as alleged in the show cause notice. Therefore, impugned order is to be set aside.

3. On the other hand, learned AR submits that the facts of **Biopac India Corporation Ltd. (supra)** are not similar to the facts of the facts of present case as in said case the capital goods was substantially put in use whereas in this case, sufficient use was not of the capital goods is in question.

4. Heard the parties and considered the submissions.

5. In this case, the Cenvat credit sought to be denied to the appellant by invoking Rule 3(5) of Cenvat Credit Rules. The provision of Rule 3(5) of Cenvat Credit Rules are extracted below:

“(5) When inputs or capital goods, on which CENVAT credit has been taken, are removed as such from the factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in rule 9;

Provided that such payment shall not be required to be made where any inputs or capital goods are removed outside the premises of the provider of output service for providing the output service:

Provided further that such payment shall not be required to be made where any inputs are removed outside the factory for providing free warranty for final products. ”

6. On going through the said provisions, I find that if capital goods or inputs have been removed as such, then the only option is that assessee is required to reversed the Cenvat credit availed on these goods. From the facts and circumstances of the case and judgment relied upon, wherein it is stated that if capital goods are put in use, in that case, provision of Rule 3(5) of Cenvat Credit Rules, 2004 are not applicable,. Admittedly, in the case in hand, capital goods

were in use by the appellant and after use have been destroyed in fire. Therefore, the decision of Hon'ble Gujarat High Court in the case of ***Biopac India Corporation Ltd.*** (supra) is squarely applicable to the facts of this case. Further, the argument advanced by learned AR is in vain, as there is no such provision in Central Excise Act or Rules to define what is substantial use of capital goods. Therefore, the arguments advanced by learned AR is not tenable. As the provision of Rule 3(5) of Cenvat Credit Rules, are not applicable to the facts of the present case. Therefore, the Cenvat Credit is entitled to the appellant and not required to be reversed.

7. In these facts and circumstances, I set aside the impugned order and allow the appeal with consequential relief, if any.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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