CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

<u>COURT-I</u>

Date of hearing: 18.09.2017

Appeal No. E/1493-1497/2006-EX[DB]

[Arising out of the Order-in-Original No. 62/COmm/MRT-I/2005 dated 30.12.2005, passed by the Commissioner of Central Excise, Meerut-I]

M/s. Uttam Sugar Mills Ltd.
Shri Ranjan Adlakha … Appellant

Vs.

C.C.E. Meerut-I ... Respondent

Appearance:

Present Ms. Rinky Arora, Advocate for the appellant
Present Shri H.C. Saini, DR for the respondent

Coram: **Hon'ble Mr. Justice (Dr.) Satish Chandra, President**
Hon'ble Mr. V. Padmanabhan, Technical Member

<u>FINAL ORDER No. 56996-57000/2017</u>

<u>Per Justice (Dr.) Satish Chandra:</u>

The present appeal is filed against the Order-in-Original No. 62/2005 dated 30.12.2005. The period of dispute is 02.03.2004 to 02.12.2004.

2. The brief facts of the case are that the appellant is engaged in the manufacture of Vacuum Pan Sugar and Molasses under chapter 17. During the impugned period, the appellant purchased certain capital goods for efficiency programme and expansion programme which was completed by 25.10.2004 and availed Cenvat Credit on the said capital goods and utilized it for

the payment of Excise duty on the final product. The Department alleged that the credit availed on capital goods procured during the impugned period was inadmissible as these have been exclusively used for the manufacture of exempted goods and as such is required to be recovered. Hence duty was demanded and equivalent amount of penalty was also imposed. Being aggrieved, the appellant filed the present appeal.

3. With the above background, we have heard Ms. Rinky Arora, Advocate for the appellant and Shri H.C. Saini, DR for the respondent.

4. In the instant case, appellant has enjoyed w.e.f. 03.12.2004 the benefit of area based exemption under notification no. 49/03 & 50/03 dated 10.06.2003. Prior to that, the capital goods were installed and utilize, when the appellant was paying the duty and not availing the benefit of the area based exemption. Identical issue has come up before this Tribunal in the case of ***Cheema Papers Ltd. Vs. CC Meerut vide Final order no. A/53316/2017-EX(DB) dated 16.05.2017*** wherein it was observed that:

> *"6. The Appellants have procured various capital goods and availed the Cenvat Credit during the period April 2002 to July 2003. It is pertinent to note that at the time of procurement of the capital goods, the Appellants were manufacturing and clearing the finished products on payment of duty. Consequently, the Cenvat Credit on capital goods is allowable during the said period. The fact that from a subsequent date i.e. 07.08.2003 the Appellants opted for and started availing area base exemption will not disentitle them to the Cenvat*

Credit already availed. We find support for this view in the decision of the Larger Bench of this Tribunal in the case of Commissioner of Central Excise, Rajkot vs Ashok Iron & Steel Fabricators, 2002 (140) ELT 277 (Tri.-LB), wherein the Tribunal has held that :

> *"6.Before the Supreme Court the Attorney General drawing support from the decision in Super Cassettes Industries Ltd. contended that there could be no final credit until the inputs were used and excise duty on the final product was paid or the inputs were otherwise disposed of. The submission was that the credit was a contingent credit. It might be disallowed under certain circumstances. The manufacturer did not have any indefeasible right or title to it. The credit of excise duty on the raw material in the register maintained for Modvat purposes was only a book entry which might be utilised later for payment of excise duty on the excisable product. In other words, it matured when the excisable product was removed from the factory and the stage for payment of excise duty thereon was reached. This argument did not find favour with the Apex Court. The nature of the credit for excise duty paid on raw material was explained in the following manner:-*
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> > *"It is clear from these Rules, as we read them, that a manufacturer obtains credit for the excise duty paid on raw material to be used by him in the production of an excisable product immediately it makes the requisite declaration and obtains an acknowledgement thereof. It is entitled to use the credit at any time thereafter when making payment of excise duty on the excisable product. There is no provision in the Rules which provides for a reversal of the credit by the excise authorities except where it has been illegally or irregularly taken, in which event it stands cancelled or, if utilised, has to be paid for. We are here really concerned with credit that has been validly taken, and its benefit is available to the*

> *manufacturer without any limitation in time or otherwise unless the manufacturer itself chooses not to use the raw material in its excisable product. The credit is, therefore, indefeasible. It should also be noted that there is no co-relation of the raw material and the final product; that is to say, it is not as if credit can be taken only on a final product that is manufactured out of the particular raw material to which the credit is related. The credit may be taken against the excise duty on a final product manufactured on the very day that it becomes available."*

7. The learned Departmental Representative very staneously argued interpreting different provisions relating to the Modvat Scheme that availing of Modvat credit was not irrevocable and when subsequently the end product was exempted from duty the entry has to be reversed even if the credit has been utilised by the time. He placed reliance on the following decisions of the Supreme Court in-

(1) CCE, Meerut v. Modi Rubber Ltd. [2001 (133) E.L.T. 515 (S.C.)]

(2) CCE, Jaipur v. Raghuvar (India) Ltd. [2000 (118) E.L.T. 311 (S.C.) = 2000 (38) RLT 777 (S.C.)]

(3) Chandrapur Magnet Wires (P) Ltd. [1996 (81) E.L.T. 3 (S.C.)]

(4) CCE, Vadodara v. Dhiren Chemical Industries [2002 (139) E.L.T. 3 (S.C.)]

and took us through those decisions. We find that none of these decisions relate to the issue with which we are concerned. We are not informed that a later decision of the Supreme Court has taken a different view from Dai Ichi Karkaria Ltd. In view of the above, we are bound by the dictum laid down by the Supreme Court in Dai Ichi Karkaria Ltd. Since the issue is now covered directly by a decision of the Apex Court, we find it not necessary to place the matter *before a Bench of 7 Members even though a Bench of 5 Members has taken a contra view in Khanbhai Esoofbhai."*

7. In view of the above discussions, we are of the view that the impugned order is not sustainable and hence it is set aside and the appeal is allowed.

8. In the result, the appeal filed by the assessee-Appellants is allowed."

5. By following our earlier decision, we set aside the impugned order and allow the appeal filed by the appellant.

[Dictated and Pronounced in the open court]

(V. Padmanabhan)
Technical Member

(Justice Dr. Satish Chandra)
President

Bhanu