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

Date of Hearing/ Decision: 31.10.2017

Appeal No. E/3217/2007-SM

(Arising out of Order-in-Appeal No. 335 (RSK)CE/JPR-I/2007 dated 26.11.2007 passed by the Commissioner of Customs and Central Excise (Appeals) Jaipur Delhi- 302005)

R.S. Hygiene (P) Ltd. — Appellant

Vs.

CCE Jaipur-I — Respondent

Appearance

None - for the appellant

Shri U. Sengraj, AR - for the respondent

CORAM: **Hon'ble Mr. M.V. Ravindran, Member (Judicial)**

Final Order No. 57508/2017

Per M.V. Ravindran :

1. This appeal is directed against Order-in-Appeal No. 335/2007 dated 26/11/2007.

2. None appeared on behalf of the appellant despite notice. Since the issue is in a narrow compass and matter has been remanded by the Hon'ble High Court of Madhya Pradesh, I take up the appeal for disposal even in the absence of any representation.

3. Heard the Ld. Departmental representative and perused the records.

4. It transpires from the record that the lower Authorities have come to a conclusion that appellant has availed ineligible Cenvat credit on inputs which were utilized for manufacturing of goods

exempted, but discharged the duty liability by the appellant on clearances during the period April, 2001 to June, 2001. It is the case of Revenue in the show cause notice and as adjudicated by the lower Authorities, that if the final goods are exempted, there was no need to pay any duty and payment of duty consequently availing ineligible Cenvat credit need to be reversed. The Tribunal by its Final Order dated 05/01/2015 held in the favour of the appellant herein which was contested by the revenue before the Hon'ble High Court. Their Lordships while remanding the matter back to us has recorded that few points as canvassed by the revenue before the Hon'ble High Court needs to be considered by Tribunal.

5. The Ld. DR submits that the point which was canvassed by the revenue is enshrined in para No. 2, 6 and 7 of the Order-in-Appeal. He submits that the appellant had availed the Cenvat credit on the inputs which were utilized for exempted goods cleared on payment of duty from April, 2001 to June, 2001. He submits that the summary of the findings of the First Appellate Authority is that appellant could not have availed Cenvat credit and strategy applied by the appellant is to pass on the Cenvat credit to their purchasers. He referred to the decision of the Tribunal in the case of *Albert David Ltd*. 2003 (151) ELT 443 for this preposition.

6. On careful consideration of the submissions made by Ld. DR, I find that the First Appellate Authority's view as to discharge of duty liability on the finished goods which are exempted, cannot be considered as reversal of Cenvat credit is contrary to the law settled

by the judgment of Hon'ble High Court of Bombay in the case of *Ajinkiya Enterprises* 2013 (294) ELT 203 (Tri-Mumbai). I reproduce the relevant paragraph 9 & 10.

> ***9.*** *It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted.*
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> ***10.*** *Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue.*

7. As regards the decisions relied upon by the Ld. Departmental Representative I find the issue involved in the case as per facts and

circumstances, is covered by the judgement of the Hon'ble High Court of Bombay.

8. Accordingly, in view of the foregoing, I find that the impugned order, is unsustainable by virtue of the ratio of the High Court of Bombay decision in the case of *Ajinkiya Enterprises*; Law being settled I find that the impugned order is liable to be set aside and I do so. The impugned order is set aside and the appeal is allowed.

(Order dictated and Pronounced in open Court)

(M.V. Ravindran)
Member (Judicial)

Rekha