In the Customs, Excise & Service Tax Appellate Tribunal
West Block No.2, R.K. Puram, New Delhi-110066

Appeal No.E/2965/2005
(Arising out of Order-in-Appeal No.IND-I/143/2005 dated 31.05.2005 passed by Commissioner Appeal-II, Custom & CE, Indore)

CCE Indore …Appellant

Vs

Raj Packwell Ltd …Respondent

Appearance:
Present for the Appellant : Shri R.K. Mishra, AR
Present for the Respondent : None (Letter from Respondent)

Coram:
HON'BLE JUSTICE (DR) SATISH CHANDRA, PRESIDENT
HON'BLE MR B.RAVICHANDRAN, MEMBER (TECHNICAL)

Date of hearing/decision: 08.12.2017

Final Order No.58416/2017

Per B. Ravichandran,

The Revenue is in appeal against order dated 31.05.2005 of Commissioner (Appeals-I), Indore. The respondents are engaged in the manufacture of HDPE tapes/fabrics/woven sacks liable to excise duty. The dispute in the present appeal relates to a Modvat Credit of Rs.16,50,610.61 in terms of Rule 57H of the then Central Excise Rules, 1944. The original authority disallowed the credit and imposed a penalty of Rs.5 lakhs on the respondent. On appeal, vide the impugned order, the Commissioner (Appeals) allowed the appeal and set-aside the original order. Aggrieved by the order, the Revenue filed this appeal.

2. None appeared on behalf of the respondent. We have heard the ld AR and perused the appeal record. The Modvat Credit was denied to the respondent on the ground that they have availed the same suo-moto and the credit is not eligible to them in view of the amendment of the erstwhile Rule 57H. The impugned order examined all the objections raised by the Revenue for disallowing the credit. We note that the respondent availed the credit based on the judgement dated 30.10.1993 of the Hon'ble MP High Court in the case of M/s Gilt Pack Ltd. The respondent did write to the Jurisdictional Officer seeking permission to avail such credit and followed the same with many reminders. Finally, they have availed the credit on 31.01.1994. The impugned order examined all grounds raised by the Revenue for disallowing the credit. It was categorically recorded that the credit in dispute relates to the period March,1987 to November, 1988. It is recorded that the credit claimed by the respondent under Rule 57H during 1989 relating to raw materials used in the manufacture of finished goods cleared from 01.03.1987 till the date of filing declaration for Modvat and is clearly permissible in terms of order of Hon'ble MP High Court in M/s Gilt Pack Limited, 1994 (69) ELT 222 MP. The said decision has been upheld by the Hon'ble Supreme Court.

3. In the face of above clear findings based on facts and legal position, we find no merit in the appeal of the Revenue. The communication of the Jurisdictional Asstt. Commissioner, with reference to earlier credit, has no relevance to the dispute now under consideration. The applicability of provisions of Rule 57H cannot be disputed. The credit eligibility is as per Hon'ble M.P. High

Court's order mentioned above. We find no merit in the present appeal by the Revenue. The same is dismissed.

(Operative part of the order pronounced in the open Court)

(Justice (Dr) Satish Chandra)
President

(B. Ravichandran)
Member(Technical)

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