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

Date of Hearing/Order: 8.12.2017

Appeal No. E/51508/2017-SM
E/51511/2017-SM

(Arising out of Order-in-Appeal No. 33-38/AK/CE/JPR/2017 dated 11.4.2017 passed by the Commissioner (Appeals), Customs & Central Excise, Jodhpur)

M/s Guljag Industries Ltd. Appellant

Vs.

CCE & ST, Jodhpur Respondent

Appearance

Shri O.P. Agarwal, Advocate - for the appellant

Shri U. Sengraj, D.R. - for the respondent

CORAM: **Hon'ble Mr. S.K. Mohanty, Member (Judicial)**

Final Order No. 58539-58540/2017

Per S.K. Mohanty :

The issue involved in both these appeals is identical and as such, the same are taken up for hearing together and a common order is being passed.

2. The brief facts of the case are that the appellant is engaged in the manufacture of Sulphuric Acid, Oleum etc., falling under Chapter 28 of the Central Excise Tariff Act, 1985. The appellant avails Cenvat credit of Central Excise duties paid on inputs and capital goods and service tax on the input services. For manufacture of above chemicals, steam is used as a process requirement, which is generated in the factory of the appellant by burning sulphur. Excess steam generated in the factory is used for generation of electricity,

which is captively used within the factory and some portion of generated electricity is wheeled out of the factory for a price. The department objected that the appellant was not entitled to take Cenvat credit on the inputs used for generation of steam within the factory, inasmuch as, such steam was not used for generation of electricity for entire captive consumption. Accordingly, the department proceeded against the appellant for denial of Cenvat credit taken on input and input services used in electricity, which were wheeled out from the factory in terms of erstwhile Rule 57AD (1) of the Central Excise Rules, 1944 and Rule 6(3) of the Cenvat Credit Rules, 2001/2002.

3. The ld. Consultant appearing for the appellant submits that electricity is not exempted goods in view of the fact that no rate of duty for such goods has been provided in the Central Excise Tariff Act, 1985. He further submits that since electricity is neither exempted nor attracts Nil rate of duty, the embargo created in Rule 6(3) of the Cenvat Credit Rules will not have any application for payment of amount on removal of electricity out of the factory. In this context, the ld. Advocate has relied on the judgement of Hon'ble Allahabad High Court in the case of ***Gularia Chini Mills & Ors. Vs. Union of India*** – 2013-TIOL-568-HC-ALL-CX., which was upheld by the Hon'ble Supreme Court reported in 2015 (322) ELT 769 (SC). He further submits that the show cause proceedings initiated by the department is barred by limitation of time, inasmuch as, taking of

Cenvat credit by the appellant is in conformity with the Cenvat statute and there is no involvement of suppression, misstatement, fraud etc., on the part of the appellant in defraud the government revenue. Thus, he submits that the show cause notice should be confined to the normal period of limitation.

4. On the other hand, the ld. DR appearing for the Revenue submits that the Cenvat credit is available on the inputs and input services, which were used for generation of electricity for captive consumption within the factory for manufacture of the final product. Since generated electricity is wheeled out from the factory, the appellant is not entitled for the entire Cenvat benefit on the input and input services. Thus, he submits that the embargo created in Rule 6(3) of the Cenvat Credit Rules, 2001/2002 should be applicable for reversal of Cenvat credit/payment of amount on the value of electricity wheeled out from the factory.

5. Heard both sides and perused the case records.

6. It is an admitted fact on record that the electricity generated within the factory by use of steam, were not utilised/used in entirety within the factory for manufacture of the excisable final product. Since, a portion of the generated electricity is wheeled out from the factory, the appellant was not entitled to take credit or was required to reverse Cenvat credit proportionately in respect of the electricity

wheeled out from the factory. Since this particular aspect has not been discussed in the impugned order, I am not expressing any opinion with regard to the applicability of Rule 6(3) ibid for payment of amount, on wheeling out of electricity from the factory. However, it is an admitted fact that the issue with regard to applicability of sub-rule (3) of Rule 6 ibid was highly contentious and at the material time, there was no proper clarity with regard to dealing with manufacture of dutiable as well as final product. Therefore, mala fides cannot be attributed, justifying invocation of the extended period of limitation and for imposition of penalties.

7. Therefore, I am of the considered view that the extended period of limitation cannot be invoked in this case and the demand, if any, should be confined only to the normal period. In absence of any mala fides on the part of the appellant, penalty cannot be imposed on it.

8. The appeal is disposed of in above terms.

(Dictated & pronounced in open Court)

(S.K. Mohanty)
Member (Judicial)

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