CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,
West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing/decision: 05.01.2018

Appeal No. E/50486/2017- [DB]
[Arising out of the Order-in-Original No. 54/COMMR/DDN/2016 Dated 08/12/2016 passed by the Commissioner of Central Excise-Dehradun]

Rai Bahadur Narain Sugar Mills … Appellant

Vs.

CCE, ST, Dehradun …Respondent

Appearance:
Present Shri Aalok Arora, Advocate for the appellant
Present Shri H.C. Saini, AR for the respondent

Coram: Hon'ble Justice Dr. Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

FINAL ORDER No. 50084/2018

Per B.Ravichandran

1. The appellant is operating a sugar mill in Laxar, District Haridwar, Uttrakhand and manufacturing sugar, molasses etc availing area based exemption under Notification No. 50/2003 CE dated 10/06/2003. The said scheme was available to them upto 02/11/2014 as per the said notification. The appellant further expanded their manufacturing process by adding a distillery facility adjacent to the sugar mill. For setting up the distillery they have procured various capital goods and availed input services also. The dispute in the present appeal relates to their eligibility to Cenvat Credit for the capital goods as well as such input services. The appellant availed such credit claiming that the distillery unit is independently recognized factory by various authorities and the same is not availing area based exemption availed by sugar unit. The revenue contested such claim and initiated proceedings against the appellant to demand and recover the credit availed on such capital goods and input services. The Original Authority held that the appellant being the same Central Excise assessee under a single registration, cannot take credit on such capital goods and input services as they are not covered by Cenvat Credit Rules. He also recorded that on the date of receipt of the duty paid capital goods the appellants were not discharging any duty on the goods manufactured in view of area based exemption.

2. The Ld. Counsel appearing for the appellant submitted that the sugar factory and distillery unit set up later were independent and were as such recognized by various authorities like State Excise Department and others under Factories Act etc. He further submits that though the appellant did not take separate Central Excise registration for the distillery unit, the fact that the distillery unit is located in an identifiable separate campus and the products manufactured in the said distillery units were cleared on payment of duty without availing area based exemption will clearly indicate that both the units are separate manufacturing in facility and be treated for Excise purpose accordingly. The appellants have filed intimation on 27/11/2014 with the Jurisdictional Assistant Commissioner regarding exercising option under Rule 6 (3A) of the Cenvat Credit Rules, 2004. In the said letter they have intimated the Jurisdictional officer regarding manufacturing unit wise dutiable goods and exempted goods for Cenvat Credit purposes.

3. The Ld. Counsel submitted that the present show cause notice was issued on 04/01/2016 well beyond the normal period from date of full knowledge of the Department regarding the manufacturing facility and putting up of distillery unit by them. Thus, he contested the proceedings both on limitation as well as on merit.

4. The Ld. AR submitted that the Revenue will recognize the appellant as one licensed registrant only. The appellant did not apply and take registration for distillery unit which will make them recognizable as a separate assesees for these units. In the absence such legal recognition it is not possible for the lower authority to allow any credit under Cenvat Credit Rules as the final products are not paying or liable to pay Central Excise Duty. Regarding the appellants payment of duty on certain products manufactured and cleared from distillery unit and the argument of the appellant to the effect that distillery units should be recognized as a separate factory, he submitted that this aspect requires further verification.

5. We have heard both sides and perused the appeal records.

6. The admitted facts are that the appellants were availing area based exemption for the sugar factory. They have to put up additional facility as a distillery, adjacent to the said sugar factory. They did not take separate Central Excise registration for the said distillery. It would appear that the appellant are praying that not taking separate registration under Central excise alone should not result in denial of Cenvat Credit on the capital goods and input service which are otherwise eligible when used for dutiable final products. We have perused certain sample ER-1 returns for the relevant period. It is clear that the appellants did discharge duty on carbon dioxide and denatured spirit cleared from the distillery during 2014. It is not clear as to how such duty payment was accepted/ assessed when the revenue contends that the assesee is one license holder and availing area based exemption for such license. In other words, if the unit is one and the same as contended by the Revenue, the products which are otherwise eligible for exemption under the said notification are to be cleared without payment of duty. It is not tenable to hold that some products can avail area based exemption and others need not avail area based exemption. Admittedly, the lower Authorities recorded that various products manufactured in the distillery unit are not excluded from the area based exemption. Hence, we find the contradiction in the approach by the Revenue while denying the credit on capital goods and input services which were admittedly used in setting up and further manufacture in distillery unit. This aspect requires a fresh consideration based on the analyses made above.

7. In view of the above we note that the impugned order as it stands cannot be sustained. The issue relating to the recognition of distillery unit and sugar unit as separate entities for the purpose of Central Excise and Cenvat Credit Rules requires a fresh consideration. The appellant shall be provided adequate opportunity to submit their side of the case. The Original Authority shall decide the case after taking in to account all the legal submissions made by the appellant.

8. The appeal is allowed by way of remand.

[Order dictated and pronounced in the open court]

(Justice Dr. Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Rekha

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