IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI PRINCIPAL BENCH, COURT NO. I

Excise Appeal No. 2349 - 2354 of 2008

[Arising out of Order-in-Appeal No. 107-116/DK/CE/JPR-II/2008 dated 22.08.2008 passed by the Commissioner (Appeals), Customs & Central Excise, Jaipur II]

M/s. Ergen Plastic Industries. **Appellant**
Krishna Polymers
Agarwal Packers
Surbhi Metals (India) P Ltd.
Raj Shree Polymers (P) Ltd.
Suparshva Industries

Vs.

Commissioner of Central Excise **Respondent**
Jaipur II

Appearance:

Shri O P Agarwal, Consultant for the Appellants
Shri R K Mishra, AR for the Respondent

CORAM:

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

Date of Hearing/ Decision: 10.1.2018

FINAL ORDER NO. 50272-50277 /2018

Per: V. Padmanabhan:

The present appeals are filed against Order-in-Appeal Nos. 107-116/DK/CE/JPR-II/2008 dated 22.08.2008.

2. Brief facts of the case are that the appellants are engaged in the manufacture of excisable goods and were availing cenvat credit of duties paid on inputs under the Cenvat Credit Rules, 2004. The appellants vide their letter dated 30/31.3.2003 informed about opting out of the scheme w.e.f. 1.4.2007 and switched over to the exemption from duty, based on the value of clearances under Notfn. No. 8/2003-CE dated 01.03.2003 as amended. As per the requirement of Rule 11 (2) of the Cenvat Credit Rules, 2004, the appellants deposited an amount equivalent to the Cenvat Credit (including Cess) allowed to them in respect of inputs lying in stock or in process or contained in final products lying in stock on the date of switch over.

3. The appellant has filed the refund claim, which was denied to the appellant. Being aggrieved, the appellants have filed the present appeals.

4. With this background, we heard Shri O P Agarwal and Shri R K Mishra, learned counsel for the parties and gone through the material available on record.

5. The impugned order decides the issue in respect of 10 manufacturers. All the appellants were engaged in the manufacture of various excisable goods and were availing cenvat credit of duties paid on inputs under Cenvat Credit Rules, 2004. However, they opted out of Cenvat Credit scheme w.e.f. 1.4.2007 and switched over

to the exemption based on value of clearance under notification No. 8/2003 dated 1.3.2003 as amended. The dispute is whether the appellants are required to satisfy the requirement of Rule 11(2) of the Cenvat Credit Rules, 2004. This Rule is applicable to a manufacturer who opts for exemption from whole of the duty of excise leviable on goods manufactured under a Notification based on value or quantity of clearances in a financial year and who has been availing the cenvat credit of duty paid on inputs before such option is exercised. He shall be required to pay an amount equal to credit allowed to him in respect of inputs lying in stock or in process or contained in the final products lying in stock on the date when such an option is exercised. Rule further specifies that after deducting the said amount from the balance lying in credit, the balance, if any, still remaining shall lapse. In the present case, in respect of these manufacturers the credit available on the date of paying the duty was not sufficient to cover the cenvat credit attributable to the inputs as well as inputs contained in the finished goods lying in stock. Consequently, the department was of the view that balance is required to be paid in cash. Such amount paid was claimed as refund by the manufacturers which stand denied by the department.

6. The case made out by the appellant is that there is no need to pay the balance if any, after deducting the balance available in the cenvat credit. Learned Counsel representing the appellants brought

to our notice the decision of the Hon'ble High Court of Punjab & Haryana High Court in the case of ***Commissioner vs. C N C Commercial Ltd. [2008 (224) ELT 239 (P&H)***] in which similar facts were dealt with in respect of Modvat Rules in which the Hon'ble P & H High Court has observed as follows:

> "***5. We have heard the learned Counsel for the appellant-revenue at considerable length and find that no question of law warranting admission of the appeal would arise. There are findings of fact recorded by the Commissioner (Appeals) as upheld by the Tribunal to the effect that the assessee-respondent had correctly availed and utilized the credit of duty paid by them on those inputs when these final products were chargeable to excise duty. It has further been found that there was no one to one relationship of the inputs used and the final products manufactured and cleared from the factory. It has rightly been held that the credit of duty paid on inputs cannot be confined to a particular raw material to which the credit is related and out of which a final product is manufactured. Therefore, it has been rightly held that the assessee-respondent were not required to reverse the Cenvat credit of Rs. 88,731/- The judgment of the Hon'ble Supreme Court in Dai Ichi Karkaria case has been correctly applied. There is thus no merit in these appeals which are accordingly dismissed."***

7. We also note that similar case has also came up before the Hon'ble Supreme Court in the case of ***Sonalac Paints & Coatings***

Ltd. vs. CCE [2015 (319) ELT 229 (SC)] where the Hon'ble Supreme Court has observed as follows:-

> ***9. After discussing this Rule and interpreting the same, the Commissioner took the view that the said Rule would not come as a handicap in the way of the appellant in claiming the benefit of the said Notification inasmuch as it nowhere provides that the Modvat credit balance which was there with the appellant had to be debited before exercising the option to avail the exemption under the aforesaid Notification. After reproducing the Rule, the same is interpreted by the Commissioner in the following manner :-***
>
> ***"4.6 .... sub-rule (2) of Rule 57AG of the Rules inter alia further provide that a manufacture who opts for exemption from the whole of the duty of Excise leviable on the goods manufactured by him under a notification bases on the value or quantity of clearances in financial year, and who has been availing of the credit of the duty paid on the inputs before such option is exercised, shall be required to pay an amount equivalent to the credit, if any, allowed to him in excisable goods lying in stock on the date when such option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared from home consumption or for export.***
>
> ***4.7 As per the text of the rule the noticees were required to pay an amount equivalent to the credit, if any, allowed to***

them in respect of inputs lying in stock or used in any finished excisable goods lying in stock on the date when option to avail exemption of duty was exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining was to lapse and was not to be utilized for payment of duty on any excisable goods.

4.8 The text of Rule 57AG(2) is clear and credit attributable to inputs as such or contained in finished goods was to be debited only if there was balance in the Modvat credit amount. If there was no balance no debit was required to be made. Neither Rule 57AF nor any other rule or notification lays down that in the event of non-debiting of aforesaid amount the benefit available under Notification No. 8/2000 shall be denied. There is no averment in the show cause notice to any rule or notification which had laid down for such denial."

8. After perusal of the above decisions, it is evident that Rule 11(2) as well as Rule 11(3) do not deal with a situation in which the balance in the cenvat credit is not adequate to cover the duty attributable to the inputs as well as finished products in stock on the date of opting out of cenvat credit scheme.

9. By following the decision of Hon'ble Punjab and Haryana High Court as well as Hon'ble Apex Court, we come to the conclusion that there is no requirement for the appellants to pay the balance amount in

cash. Consequently, they will be entitled to the refund of such amount, if already paid.

10. In the result, appellants succeed in their appeal. Impugned orders are set aside and appeals allowed.

(Dictated and pronounced in the open Court)

(Justice (Dr.) Satish Chandra)	**(V. Padmanabhan)**
President	**Member (Technical)**

ss