CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH - COURT NO. 1

Excise Appeal No. 1570 of 2010

(Arising out of Order-in-Appeal No. 111-CE/D-II/2010 dated 18.03.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-II)

DATE OF HEARING : 03.04.2018
DATE OF DECISION : 03.04.2018

M/s SRV Print Pack (P) Ltd. ..... **Appellants**
(Rep. by Sh. Naveen Mullick, Adv.)

VERSUS

CCE, Delhi-II ..... **Respondent**
(Rep by Sh. R.K. Mishra, DR)

CORAM : **HON'BLE MR. JUSTICE (DR.) SATISH CHANDRA, PRESIDENT**
HON'BLE MR. V. PADMANABHAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 51271/2018

PER V. PADMANABHAN :

The present appeal is filed by the assessee-Appellants against the Order-in-Appeal No. 111-CE/D-II/2010 dated 18.03.2010 passed by the Commissioner of Central Excise (Appeals), Delhi-II. The period in dispute is July 2007 to February 2008.

2. The brief facts of the case are that, the assessee-Appellants are engaged in the manufacture of printed/laminated/ metalized flexible plastic film in rolled form. They were availing Cenvat Credit of duty paid on inputs and making use of such Cenvat Credit for paying central excise duty on their finished products. The Hon'ble Supreme Court in the case of **Metlex (I) Pvt. Ltd. vs CCE, New Delhi,** 2004 (165) ELT 129 (SC), has held that, the activity of laminating/metalizing of duty paid film does not amount to manufacture. The Revenue was of the view that, since the finished products manufactured by the assessee-Appellants was not liable to central excise duty, the assessee-Appellants had improperly availed the Cenvat Credit during the disputed period. Accordingly, after issuance of show cause notice, both the authorities below held that the assessee-Appellants were liable to reverse the Cenvat Credit which was already availed. Being aggrieved, the assessee-Appellants have filed the present appeal.

3. With this background, we have heard Sh. Naveen Mullick, learned counsel for the assessee-Appellant and Sh. R.K. Mishra, learned DR for the Revenue.

4. The learned counsel submits that though there was no need for the assessee-Appellants to pay the duty on the printed/laminated/ metalized film manufactured by them, but the same was paid by making use of the Cenvat Credit which was availed. In the process of payment of duty, not only the full

Cenvat Credit, during the disputed period, was utilized, but, in addition, they have also paid some amount of duty in cash. It is his submission that whatever Cenvat Credit was availed during the period has already been reversed in the process of payment of duty and hence the Revenue is not justified in once again asking for payment of Cenvat Credit availed by the assessee-Appellants. In this connection, he relied upon the decision of the Hon'ble Gujarat High Court in the case of **Commissioner of Central Excise & Customs, Surat-III vs Creative Enterprises,** 2009 (235) ELT 785 (Guj.).

5. On the other hand, the learned DR justified the impugned order. He submitted that after the Apex Court decision came to be known, the Notification No. 22/2008-CE(NT) DATED 02.05.2008 was already issued in which the Government extended the immunity from the reversal of Cenvat Credit to the assessee-Appellants who have paid excise duty on metalized plastic films. As such the Notification granted immunity only upto 02nd February, 2004 and since the disputed period is beyond this date, the assessee-Appellants were not justified in taking and utilizing the Cenvat Credit. Hence, the same is required to be reversed.

6. After hearing both sides and on perusal of record, it appears that the activity of laminating and metalizing the duty paid film has been held to be an activity which does not amount to manufacture. After the decision of the Hon'ble Supreme Court,

the assessee-Appellants were not required to pay the duty on the finished products. However, during the disputed period the assessee-Appellants have paid duty by availing the Cenvat Credit of duty paid on the inputs. The Revenue has taken the view that such Cenvat Credit is required to be reversed since these inputs have been utilized for the manufacture of finished products which are not required to pay duty. However, the Cenvat Credit, which has been availed, has been utilized by reversal for payment of duty on the finished products. Consequently, such Cenvat Credit is to be considered as already reversed and the Revenue is not justified in once again demanding the reversal of such Cenvat Credit as has been held by the Hon'ble Gujarat High Court in the case of **Creative Enterprises** (supra) by observing that :

> **"4. The Tribunal in the impugned order after recording facts in paragraph No. 2 of its order has noted that in assessee's own case in respect of same issue, for an earlier period, it was held by Tribunal that the assessee cannot be denied modvat credit by observing as under :**
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> > **4. The learned Advocate appearing on behalf of the respondents submits that in respect of the same issue and in the same assessee's case, the Tribunal has held that the assessee cannot be denied the Modvat credit. Vide final order No. CB/470/03-WZB dated 28-10-2003, the Tribunal held as under :-**
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> > > **"We have perused the records and have considered the submissions made by both sides. The present order is clearly unjust and cannot be allowed to stand. The appellants are right in their contention that the finding regarding manufacture applies equally to levy of duty as well as eligibility to Modvat credit. It there was no manufacture, there could be no payment of duty also. There is no dispute that the appellants had paid a higher amount of duty on the goods than the credit taken. If the credit taken was not eligible, what was required was only to adjust the duty paid against that credit."**
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> **7. In the aforesaid set of facts and circumstances of the case in light of concurrent findings of fact recorded after appreciating**

> **the evidence on record by both Commissioner (Appeals) and the Tribunal, no question of law, much less a substantial question of law, arises out of impugned order of Tribunal. The appeal is accordingly dismissed."**

We further note that the above decision of the Hon'ble Gujarat High in the case of **Creative Enterprises** (supra) has already been affirmed by the Hon'ble Supreme Court as reported in 2009 (243) ELT A120 (SC).

7. In view of the above discussion, the impugned order is set aside and the appeal is allowed.

8. In the result, the appeal filed by the assessee-Appellants is allowed.

(Dictated & pronounced in the open court)

(JUSTICE DR. SATISH CHANDRA)
PRESIDENT

(V. PADMANABHAN)
MEMBER (TECHNICAL)

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