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

Excise Appeal Nos. 50944 & 50945 of 2018

[Arising out of Order-In-Appeal No. 29(SRM) CE/JDR/2018 dated 12.01.2018 and 11-15(SRM) CE/JDR/2018 dated 08.01.2018 29(SRM) CE/JDR/2018 dated 12.01.2018 passed by Commissioner (Appeals), of Central Excise & CGST, Jodhpur]

Commissioner of Central Excise & ST, Jodhpur **Appellant**

Vs.

M/s. Daga Chemicals **Respondents**
M/s. Agarwal Packers

Appearance:

Shri P Juneja & Shri H C Saini ARs for the Appellants
Shri OP Agarwal, Chartered Accountant for the Respondent

CORAM:

Hon'ble Shri Ashok Jindal, Member (Judicial)

Date of Hearing /decision: 29.06.2018

FINAL ORDER NO. 52405 - 52406 /2018

Per Ashok Jindal :

As both the appeals are arising out of common issue, both are taken up together for disposal by way of this common order.

2. The facts of the case are that the respondent are manufacturer of excisable goods and paying the duty at the time of clearance of these goods and availing cenvat credit on capital goods. The respondents opted to avail the benefit of SSI exemption under notification No. 8/2003 dated 01.03.2003. As the respondent switched over to SSI exemption when there was no cenvat credit lying in balance in their cenvat credit account but the appellant inadvertently paid amount equivalent to cenvat credit, through PLA attributable to inputs, semi finished goods and finished goods lying in their stock at the time of opting for SSI emption. Later on, on realizing that they respondents were not liable to reverse the cenvat credit, which they have paid through PLA, they filed the refund claim. The refund claims were sanctioned by the learned Commissioner (Appeals).

3. Against these orders, Revenue is before me.

4. Heard the parties and considered the submissions.

5. Considering the fact that identical issue came up before this Tribunal in the case of ***CGST & CE, Jodhpur vs. M/s. Shubham Industries and others [Final Order No. 51756 – 51758/ 2018***] wherein this Tribunal observed as under:

> ***"4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up before the Tribunal in the case of M/s Ergen Plastic***

Industries & Ors. Vs CCE, Jaipur-II, Final Order No. 50272-50277/2018 dated 10.01.2018, wherein the facts and circumstances were identical and the Tribunal has allowed the claim of the assessee-Appellants by following the ratio laid down by the Hon'ble Supreme Court in the case of Sonalac Paints & Coatings Ltd. vs CCE, 2015 (319) ELT 229 (SC).

5. By following our earlier decision (supra) and the ratio laid down by the Hon'ble Supreme Court (supra), we find no reason to interfere with the impugned order and the same is hereby sustained along with the reasons mentioned therein."

6. As the issue has already been settled by the Tribunal in favour of the respondents, therefore, I do not find any infirmity with the impugned orders, same are upheld.

7. In the result, appeals filed by the Revenue are dismissed.

(pronounced in the open court)

(Ashok Jindal)
Member(Judicial)

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