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

COURT –II

Date of hearing/ Decision: 31.08.2018

Appeal No. E/51789/2018-SMC
[Arising out of Order-in-Appeal No. OIA-174-AG-CE-JDR-2018 dated 21/03/2018 passed by COMMISSIONER OF CGST & CENTRAL EXCISE-Udaipur]

C E & ST-UDAIPUR Appellant

Vs.

CHAIRMAN PROCESSORS LIMITED Respondent

Appearance:
Sh. K. Poddar, DR for the appellant
Sh. S.C. Jain, Advocate for the Respondent

Coram:
Hon'ble Mr. V. Padmanabhan, Member (Technical)

Final Order No._52896/2018___

Per: V. Padmanabhan

1. The present appeal is filed by Revenue against the Order-in-Appeal No. 174/2018 dated 21/03/2018. The respondent is engaged in the manufacture of manmade fabrics. The dispute pertains to the period March 2015 to 2016, during which the appellant availed the Cenvat Credit on capital goods. During this period, the appellant was clearing the goods manufactured by them by availing the exemption under Notification No. 30/2004-CE dated 09/07/2004. This notification allowed clearance at 'nil' rate of duty subject to the condition of not availing the Cenvat Credit on inputs and input services. But during the said period the appellant cleared a small portion of the manmade fabric without availing the benefit of the said notification, on payment of duty. The Department was of the view that the appellant will not be entitled to the benefit of the credit on capital goods in view of the Rule 6 (4) of the

Cenvat Credit Rules, 2004 which bars the availment of credit on capital goods used exclusively in the manufacture of exempted goods. While the original authority denied such cenvat credit on capital goods, the Commissioner (Appeals) vide the impugned order allowed the benefit of credit. Against such a decision Revenue is in appeal.

2. Heard Shri K. Poddar, Ld. DR on behalf of the Revenue. He submitted that the appellant has availed the cenvat credit on capital goods. But use of such capital goods was for manufacture of goods which were cleared without payment of duty under Notification No. 30/2004. The act on the part of the respondent by clearing a negligible quantity of only 410 Meter of fabrics of payment of that excise duty of Rs. 2907/- is only an attempt to wrongly avail the benefit of credit on capital goods. He also pointed out that even this small amount of Cenvat Excise duty was paid out of the credit availed on the capital goods. Since the total quantum of clearance on payment of duty is only of the order of 0.0007%, these capital goods are to be considered only as used in the manufacture of exempted goods. Consequently, the credit will not be allowable in terms of Rule 6 (4).

3. The Ld. Counsel Shri S.C. Jain represented the respondent and submitted that the Order-in-Appeal merits to be sustained since the respondent has in fact used such capital goods in the manufacture and clearance of a portion of the finished products on payment of duty. The bar specified in Rule 6 (4) will not be incurred in the present case. The quantum of goods cleared on payment of duty is immaterial as has been held by the Tribunal in the case of ***Oberthur Card System Pvt. Ltd. v/s Commissioner of Central Excise, Noida 2013 (292) ELT (515) (Tri.-Del).***

4. The Ld. Counsel also submitted that in addition to the small amount of clearance on payment of duty, the respondent has also cleared goods for export as well as carried out job work for other manufacturers who have cleared the goods finally on payment of duty. He also relied on the case laws:-

   i. ***Commissioner of Central Excise, Maduari V/s Eastman Spinning Mills Pvt. Ltd. 2011 (271) ELT 256 (Tri.-Chennai)***

   ii. ***Winesome Yarns Ltd. V/s CCE & ST, Chandigarh-II 2015 (317) ELT 479 (Tri.-Del)***

   iii. ***Pepsico India Holdings Ltd. V/s Commissioner of C. Ex., Aurangabad 2015 (324) ELT 175 (Tri.-Mumbai)***

5. After hearing both sides and perusal of record, I find that the limited issue for decision in the case is whether the respondent is entitled to the benefit of cenvat credit on capital goods. Admittedly, such capital goods have been predominantly used for manufacture and clearance of finished products without payment of duty by availing the exemption as per Notification No. 30/2004 *ibid*. But the fact remains that a small portion of the finished products has in fact been cleared on payment of duty without availing said exemption. The Commissioner (Appeals) in the impugned order has taken the view that since a portion of the goods has been cleared on payment of duty, it cannot be held that the capital goods have been used exclusively in the manufacture of exempted goods.

6. The Tribunal in the case of ***Commissioner of Central Excise, Maduari V/s Eastman Spinning Mills Pvt. Ltd*** (Supra) had occasion to consider a similar case in which the Tribunal observes as under:-

> *"This apart, Rule 6(4) of the CENVAT Credit Rules, 2004 bars availment of credit on capital goods used exclusively in the manufacture of exempted goods, while in the present case, the duty on cotton yarn is an optional one enabling a manufacturer to clear the goods either without payment of duty or on payment of duty. Under these circumstances, it cannot be said that capital goods are exclusively used in the manufacture of exempted goods. The assessees paid duty subsequently, namely, during the month of August, 2008 on cotton yarn in terms of Notification No. 29/2004-C.E., dated 9-7-2004 and, therefore, the availment and utilisation of credit for paying duty on capital goods is in accordance with law. I, therefore, uphold the impugned order and reject the appeal."*

7. In view of the above discussions, it cannot be said that the capital goods have been exclusively used in the manufacture of exempted goods. Consequently, the bar specified Rule 6 (4) will not be applicable.

8. In the result impugned order is sustained and appeal filed by Revenue is rejected.

(Order dictated & pronounced in the open Court)

(V. Padmanabhan)
Member (Technical)

Rekha