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

Date of hearing/decision: 13.09.2018

Excise Appeal Nos. 51580 - 51581 of 2018-SM
(Arising out of Order-in-Appeal No. 144-145(AG)CE/JDR/2018 dated 08.03.2018 passed by the Commissioner, Central Excise & Central Goods and Service Tax, Udaipur).

CCE, Udaipur — Appellant- Revenue

Vs.

M/s Sitaram India Limited — Respondent-assessee

Appearance:

Sh. P. Juneja, AR for the appellant- Revenue
Sh. Hemant Bajaj, Advocate for the Respondent- Assessee

Coram:

Hon'ble Sh. V. Padmanabhan, Member (Technical)

Final Order Nos. 52960 – 52961/2018

Per: **V. Padmanabhan**:

The present appeals are filed by Revenue against the Order-in-Appeal No. 144-145(AG)CE/JDR/2018 dated 08.03.2018 passed by the Commissioner, Central Excise & Central Goods and Service Tax, Udaipur.

2. The respondent is engaged in the manufacture of cotton and polyester yarn and was availing the benefit of cenvat credit on inputs and input services which were used in the manufacture of final products till March, 2013. W.e.f. 01.04.2013, they opted for the benefit of Notification No. 30/2004 dated 09.07.2004 which granted exempted from payment of duty on textile products

subject to the condition of non-availing the cenvat credit benefit. Simultaneously, the respondent stopped availing the cenvat credit benefit. Revenue was of the view that consequent upon opting for the exemption notification as above, the respondent will be liable to follow the transitional provision outlined in Rule 11(3)(ii) of the Cenvat Credit Rules, 2004. Accordingly, show cause notice was issued proposing to compulsory lapse of the cenvat credit standing to the credit of the respondent at the time of opting for the exemption notification. The original authority upheld the show cause notice, but the Commissioner (Appeals), vide the impugned order, set aside the demand. Aggrieved by the said decision, Revenue has filed the present appeals.

3. With the above background, we heard Shri P. Juneja, ld. AR for the Revenue who justified the impugned order passed by the original authority and submitted that the Commissioner (Appeals) appeared to have erred in taking the view that the respondent will be covered by sub-rule 3(i) of Rule 11 of Cenvat Credit Rules, 2004. He also submitted that since the respondent has claimed exemption from payment of Central Excise duty under Notification No. 30/2004 ibid they were required to follow the provisions of Rule 11(3)(ii).

4. Heard Shri Hemant Bajaj, ld. Advocate for the Respondent. He submitted that

(i) Rule 11(3) ibid provides for transitional provision which covers within sub-rule (i), the condition which is required to be followed when an assessee opts for exemption from whole of the duty of excise. Sub-rule 11(3)(ii) however covers those cases where final product is exempted absolutely under Section 5A and the assessee has no option but to follow such exemption.

(ii) In the present case, ld. Advocate pointed out, that the respondent has opted for availing the Notification No. 30/2004, which is aconditional notification and hence will fall within the provisions of Rule 11(3)(i).

(iii) He relied on the following case laws in which, in identical circumstances, the Tribunal Benches have decided the issue in favour of the respondent.

(i) Jansons Textile Processors vs. CCE, Salem-2018(7)TMI 850 (CESTAT Chennai)

(ii) Wearit Global Ltd. vs. CCE, Udaipur – 2018 (8) TMI 1094 (CESTAT, New Delhi).

Finally he prayed that the impugned order merits no interference.

5. Heard both sides and perused appeal record.

6. The respondent who was availing the benefit of cenvat credit under Cenvat Credit Rules, 2004, opted for exemption granted by Notification No. 30/2004 ibid, w.e.f. 01.04.2013. The dispute has arisen consequent to such a move on the part of the respondent. Rule 11 of Cenvat Credit Rules, 2004 outlines the transitional provisions which are required to be followed by an assessee opting from the route of payment of duty to that of availing

exemption. The question for decision is whether the respondent will be covered by the provisions of Rule 11(3)(i) or 11(3)(ii).

7. We find that the identical issue has been considered in detail in the case laws relied by the respondent. In the case of ***Jansons Textile Processors*** (supra), the Chennai Bench of the Tribunal has taken the view that in case of conditional exemption such as exemption under Notification No. 30/2004, the assessee will be covered only by Rule 11(3)(i). This decision has been followed in the case of ***Wearit Global Ltd***. (supra) wherein the Tribunal observed as under:

> "5. *Àfter hearing both the parties, we are of the opinion that in the present case the appellant has opted for exemption as per the Notification No. 30/2004-CE where the exemption is conditional. As per Rule 11(3) (ii) CCR, Cenvat Credit balance will lapse only if the product is exempted absolutely under Section 5A of Central Excise Act. But since the Notification No. 30/2004-CE dated 09.07.2004 is a conditional notification, hence only Rule 11 (3)(i) of CCR would apply which does not mandate any such lapsing*".

8. By following the settled position of law as above, I find no infirmity in the impugned order passed by the Commissioner (Appeals). The same is sustained and the appeals filed by Revenue are rejected.

(Dictated and pronounced in the open Court).

(V. Padmanabhan)
Member (Technical)

Pant