CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

NEW DELHI.

PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 53319 of 2018 (SM)

[(Arising out of order in appeal No. IND-EXCUS-000-APP-078-18-19 dated 25.04.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.)].

M/s Minda Sai Limited **Appellant**
Plot No. S-2/8 & 9, Industrial Area
Sector-I, Pithampur
Distt – Dhar M.P.

VERSUS

Commissioner of Central Excise and Central Goods and Service Tax (Appeals) **Respondent**
Manik Bagh Palace
Post Box No. 10
Indore (M.P.)-452001.

APPEARANCE:

Sh. Praveen Sharma, Advocate for the appellant
Sh. P. R. Gupta, Authorised Representative for the respondent

CORAM:

HON'BLE MS. ARCHANA WADHWA, MEMBER (JUDICIAL)

FINALORDER No.50708/2019

DATE OF HEARING/DECISION: 10.05.2019

ARCHANA WADHWA:

After hearing both the sides, I find that the short issue involved in the present appeal is as to whether the appellant is entitled to avail cenvat credit of duty paid on heavy duty racks used in their factory where they are manufacturing wiring harness and battery cable/terminal. The appellant has contended that such storage racks were used in their factory for proper storage and handling of raw materials, work in process and the finished goods, etc.

2. On the other hand, Revenue's stand is that such racks have no nexus with the manufacturing of the final products and as such, after the amendment of the definition of "Input Services" w.e.f. 1.3.2011, the same would not get covered by the definition. Accordingly, demand of duty stands raised against them to the extent of Rs.1,27,791/- by way of issuing show cause notice dated 21.03.2017 for the period May, 2013 to December, 2015.

3. The said show cause notice stands culminated into an order passed by the Original Adjudicating Authority confirming demands along with confirmation of interest and imposition of penalty of identical amount. The said order stands upheld by the Commissioner (Appeals) and hence, the present appeal.

4. After hearing both the sides, I find that the issue is no more res integra. It stands held in various decisions that racks are required to be used for handling of raw materials as also their final product, which is a process integrally connected with the manufacture of final product and there is nothing in the definition of "input", which would exclude the same. The reference can be made to Tribunal's decisions in the cases as follows:-

(1) Shree Ramicides Chemicals P.Ltd
2014 (311) ELT 102 (Tribunal-Chennai)

(2) Lear Automotive India Ltd.
2013 (291) ELT 411 (Tribunal-Ahmd.)

(3) Kosi Plast P. Ltd.
2011 (271) ELT 93 (Tribunal-Mumbai)

(4) Welspun India Ltd.
2013 (296) ELT 122(Tribunal-Ahmd.)

(5) Gestamp Sungwoo Automotive (Chennai)P.Ltd.
2018 (363) ELT 1191 (Tribunal-Chennai)

5. Ld. Commissioner (Appeals) has not followed the said decisions on the ground that the definition of "Input" was changed w.e.f. 1.3.2011 and as such, the said decisions are not applicable.

6. However, I find that he has not relied upon or referred to any provisions of changed definition of "input" , vide which there is a specific exclusion of the racks from the definition.

7. Ld. Authorised Representative appearing for the Revenue has drawn my attention to the Exclusion Clause (E), which excludes goods, which have no relationship whatsoever with the manufacture of a final product. He submits that inasmuch as the racks have no nexus with the final product, the same have to be excluded from the definition of "Input" , as amended.

8. I don't find any merit in the above plea of the Revenue. Even in terms of the said Exclusion (E), the goods, which have no relationship with the manufacture of a final product, have to be excluded from the definition of "Input". As such, the criteria for exclusion is "relationship with the manufacture of final product". All the above decisions have held that the use of racks for storage of raw materials and finished goods is a process integrally connected with the manufacture of the final products. As such, in the light of the above observations made by the Tribunal in all the precedent decisions referred supra, the use of racks has to be held as related with the manufacture of the final product, thus, not making Exclusion Clause (E) is applicable.

9. In view of the above discussions, I find no merits in the Revenue's stand. Apart from allowing the appeal on merits, I also find that the demand stands initiated against the appellant by invoking the longer period of limitation. In the light of the law declared by the

Tribunal in various decisions holding that racks as cenvatable, the bonafide belief entertained by the assessee that such racks are cenvatable cannot be brushed aside. Otherwise also, I find that the appellant was availing the credit by reflecting the same in their cenvat credit account, in which case, no malafide can be attributed to them so as to invoke the extended period. As such, the demand is barred by limitation also.

10. In view of the foregoings, I set aside the impugned order and allow the appeal with consequential benefit to the appellant.

(Dictated and pronounced in open Court).

(Archana Wadhwa)
Member (Judicial)

Ckp