CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD
Division Bench
Court – I

Appeal No. E/1381/2011

(Arising out of Order-in-Original No. 06/2011 (C.E.) - Commr. dated 11.02.2011 passed by Commissioner of Customs & Central Excise, Hyderabad)

Commissioner of Central Excise, Customs and Service Tax, Hyderabad …..**Appellant(s)**

Vs.

M/s Pravesha Industries Ltd., …..**Respondent(s)**

Appearance
Shri Dora Reddy, (AR) for the Appellant.
Shri R. Muralidhar, Advocate for the Respondent.

Coram:
Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)
Hon'ble Mr. C.J. MATHEW, MEMBER (TECHNICAL)

Date of Hearing: 20/02/2018
Date of Decision: 20/02/2018

FINAL ORDER No. A/30411/2018

[Order per: M.V. Ravindran]

This appeal is filed by the Revenue against Order-in-Original No. 06/2011 (C.E.) - Commr. dated 11.02.2011.

2. Heard both sides and perused the records.

3. On perusal of records, and on consideration of submissions made, we find that the issue is regarding the demand of an amount equivalent to 5%/10% of the value of exempted goods cleared and demand is in terms of Rule 6(3) of CENVAT Credit Rules, 2004 for the period June, 2005 to November, 2009. The respondent herein contested the issue on merits before the Adjudicating Authority. The Adjudicating Authority after considering the entire factual matrix by the impugned order dropped the proceedings initiated by holding that part of the amount is liability to be confirmed while the majority of the amount is not to be confirmed as the respondent had not availed CENVAT credit on the finished goods cleared without payment of duty. Revenue is aggrieved by such an order.

4. Learned Counsel for the respondent submits that they are not in appeal against the impugned order to that extent the demands are confirmed by the Adjudicating Authority with interest and have already discharged entire liability of duty interest and penalty that as arisen by the confirmation in the adjudication order. It is his submission that they are reiterating the findings of the lower authorities in respect of appeal preferred by the Revenue.

5. Learned Departmental Representative would read the grounds of appeal filed by the Revenue. It is his submission that provisions of Rule 6(3) of the CENVAT Credit Rules 2004 mandates that the manufacture who is engaged in manufacture of dutiable and exempted goods needs to maintain separate accounts in respect of the inputs consumed for both the type of finished goods and manufactured and in case is not able to do so is required to 5%/10% of the value of the exempted goods cleared. It is his submission that the respondent herein had a cleared exempted goods Leaflets, Lables, Brochures during the period in question and having availed the CENVAT credit and not maintain separate accounts should have reverse an amount of 5%/10% of the value of exempted goods cleared.

6. On careful consideration of submissions made, we find that the Adjudicating Authority has correctly dropped the proceedings initiated against the respondents on the issue of demand of 5%/10% of the value of the exempted final products cleared from the factory premises. The Adjudicating Authority has specifically recorded that the exempted goods were cleared to 100% EOU and also that no credit was availed on the inputs which are used for manufacturing of leaflets. The findings were recorded by Adjudicating Authority in detailed and we concur with the same and reproduced which are as under:

> *24. Regarding issue at para 21(b) supra, as per the provisions of Rule 6(1) of CENVAT Credit Rules, 2004, CENVAT credit shall not be allowed on the inputs used in manufacture of exempted goods and in terms of Rule 6(2) of the Rules, where a manufacturer, manufactures both dutiable and exempted goods, he is supposed to maintain separate accounts for receipt, consumption and inventory of inputs meant for use in the manufacture of exempted goods and take credit only on that quantity of input which is intended for use in the manufacture of dutiable goods. In terms of Rule 6(3) of CCR, 2004, a manufacturer opting not to maintain separate accounts shall either pay an amount of 5%/10%, as applicable, of the value of exempted goods or pay an amount equivalent to the CENVAT credit attributable to the inputs used in the manufacture of exempted goods subject to following prescribed procedures and conditions. However, among others, the excisable goods cleared without payment of duty to 100% EOU are excluded from the provisions of sub-rules (1), (2) and (3) as per provisions of Rule 6(6) (ii) of CENVAT Credit Rules, 2004. The case made out against the assessee is that they are manufacturers of both exempted and dutiable goods and since they have failed to maintain separate accounts for the inputs meant for dutiable and exempted goods, they are liable to pay an amount of 5%/10% as applicable on the clearances of exempted goods. In the instant case, the assessee have cleared Labels (fully exempted from payment of duty by virtue of Notification No. 10/2003-CE dated 01.03.2003 upto February, 2006), Brochures (fully exempted from payment of duty by virtue of Notification No. 10/2003-CE dated 01.03.2003 upto February, 2006 and Tariff Rate of duty being Nil thereafter) and Leaflets (Tariff Rate being Nil from March, 2006 onwards) without payment of the amount at applicable rate in terms of sub-rule (3) of Rule 6 ibid.*
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> *25. In their defence, it is argued by the assessee that they did not avail any CENVAT credit on the inputs used in the manufacture of leaflets and hence there cannot be any demand on the clearances of leaflets. This contention of the assessee was got verified and it was found to be true. Hence, there cannot be demand under Rule 6(3) of the CENVAT Credit Rules, 2004 as far as the clearances of Leaflets are concerned. As regards, the other two items viz labels and brochures, it is contended by them that by virtue of provisions of Rule 6(6) of the CENVAT Credit Rules, clearances made to 100% EOUs should not be taken into consideration for computing their liability. They also stated that no such consignment was cleared for export under bond and the same was found to be true during verification by the Department. There is a merit in the contention of the assessee as far as the clearances made to 100% EOUs are concerned as the provisions of Rule 6(6)(ii) provide an unconditional exemption from the operations of Rules 6(1) to 6(3) ibid in that situation. Further, the Board's Circular No. 928/18/2010-CX dated 28.06.2010 clarifies the position so far as clearances of goods to 100% EOUs are related.*

7. We find that the above findings are correct and are inconsonance with the law as settled by the various decisions and more so by the Hon'ble High Court of Bombay in the case of *Repro India Ltd.,* [2009 (235) ELT (614)].

8. In view of the foregoing, we do not find any reason to interfere with the impugned order to the extent challenged by the Revenue. The Revenue's appeal stands rejected.

(Operative part of this order was pronounced in open court on conclusion of hearing)

C.J. MATHEW
MEMBER (TECHNICAL)

M.V. RAVINDRAN
MEMBER (JUDICIAL)

Lakshmi….