CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Appeal No. E/2246/2010

(Arising out of Order-in-Appeal No.52/2010 (H-IV) CE dated 30.04.2010 passed by CCCE & ST (Appeals-II), Hyderabad)

Commissioner of Customs & Central Excise,Hyderabad – IV,
Posnett Bhawan, Tilak Road, Ramkoti,
Hyderabad – 500 001 **......Appellant**

VERSUS

M/s Lal Mahal Ltd,
St. No. 123, Plot No. 10,
Qutbullar Mandal, Jeedimetla,
Hyderabad – 500 055 **......Respondent**

Appearance
Present for the Appellant: Shri C. Mallikarjun Reddy, Authorized Representative.
Present for the Respondent: None

Coram:
HON'BLE MR. P. VENKATA SUBBA RAO, MEMBER (TECHNICAL)
HON'BLE MS. RACHNA GUPTA, MEMBER (JUDICIAL)

FINAL ORDER No. A/30562/2019

Date of Hearing: 04.06.2019
Date of Decision: 04.06.2019

[Order per: RACHNA GUPTA.]

1. The present appeal has been preferred against the Order-in-Appeal No. 52/2010-CE dated 30.04.2010.

2. The appellant herein is a manufacturer of PP Woven Sacks. On the scrutiny of ER-1 returns filed by them for the months of October 2007, November 2007, February 2008 and June 2008, department noticed that the appellants have availed Cenvat Credit of Special CVD (SAD) of

Rs.21,20,767/- debited against the Import License under Target Plus Scheme in terms of notification 32/2005-CUS dated 08.04.2005. A Show Cause Notice No.74/2008 dated 31.10.2008 was served upon the appellant proposing the denial of the said Cenvat Credit availed by them being 4% of Additional Duty of Customs. The said proposal was confirmed initially by Order-in-Original No. 33/2009 dated 30.10.2009. The appeal thereof, however was allowed vide the Order-in-Appeal No. 52/2010-CE dated 30.04.2010. Resultantly, the department being aggrieved thereof, has preferred an appeal before this Tribunal.

3. None is present for the respondent. Perusal of file shows that vide order dated 08.04.2019 the notice to the respondent was issued to be served by the department as the address was found incorrect. It is thereafter that a letter dated 18.04.2019 was received from the respondent side acknowledging the pendency of the present appeal with the request of adjournment for certain dates as mentioned therein. Accordingly, the matter was listed for today. Still none has appeared. We, accordingly, proceed to decide the appeal on merits.

4. We have heard learned departmental representative. It is mentioned that the issue involved has already been decided by the Larger Bench of this Tribunal in the case of M/s Essar Steel Ltd Vs CCE, Visakhapatnam reported in *2004 (173) ELT 239*. The appeal is accordingly prayed to be allowed.

5. After hearing and perusing the entire record, we observe that the issue herein is as to whether the appellant was not entitled to avail Cenvat Credit merely on the basis of debit in the pass book. As brought to our

notice, the issue is no more *res integra*. The Larger Bench in the case of M/s Essar Steel Ltd (supra) has already held as follows:

> *"5. We have carefully considered the rival submissions. Modvat scheme is a special scheme where an assessee can avail of the duty paid on inputs as Modvat under certain conditions. One such condition is that duty should have been paid on the inputs. In the present case, no such duty has been paid by availing of the benefit of Notification 34/97. In the cases relied upon by the learned counsel for the appellant the Tribunal observed that the Department was standing on technicalities when it does not allow Modvat credit of duty paid by way of debit in the pass book while allowing credit of duty paid in cash. We, however, are unable to bring ourselves to agree with the above. Our reasons are recorded herein below:*
>
> *6. Notification 34-97-Cus. exempts goods from payment of duty when the amount representing such duties is debited in the pass book. Thus a person who has not availed the benefit of the Notification and pays duties alone can take Modvat credit.*
>
> *7.* ***We, therefore, answer the reference by holding that mere debit in the pass book is not sufficient for the eligibility of Modvat credit.****"*

6. Subsequently, the Hon'ble High Court of Madras while following the said adjudication in the case of M/s Mohan Breweries & Distilleries Ltd as reported in *2015 (325) ELT 42 (Mad.)* has held as follows:

> *"11. Under Para 4.3.5 of the EXIM Policy, it was stated as follows:-*
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> *4.3.5. Normally, the exports made under the DEPB scheme shall not be entitled for drawback. However, the additional customs duty/excise duty paid in cash on inputs under DEPB shall be adjusted as Cenvat credit or Duty Drawback as per rules framed by the Department of Revenue.* ***In cases, where the additional customs duty is adjusted from DEPB, no benefit of Cenvat/Drawback shall be admissible.***
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> *17. Under the Exemption Notifications, if the importers produced DEPB scrip and availed the exemption for clearance of goods, the goods become non-duty paid goods. The value of DEPB scrip, once used, gets extinguished and hence there would be no question of seeking Cenvat Credit thereafter."*

7. Hon'ble High Court of Allahabad in the case of CCE, C & ST, Noida Vs Precision Pipes and Profiles Co. Ltd as reported in *2014 (302) ELT 184 (All.)*

had formed the similar opinion. Following the said adjudications, we hold that Commissioner (Appeals) had taken the wrong view while permitting the availment of Cenvat credit on the basis of mere entry in DEPB book. The order is therefore held unsustainable and is accordingly set aside.

8. The appeal stands allowed.

(Dictated and pronounced in open court)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(RACHNA GUPTA)
MEMBER (JUDICIAL)

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