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

Division Bench
Court – I

Excise Appeal No. 30614 of 2019

(Arising out of Order-in-Original C.No. V/18/01/2017-Tech. dt.19.12.2017 passed by the Commissioner of Central Tax, Tirupati-GST)

Shivtek Industries Pvt Ltd
Survey No.62/A Part, Near SRAAC, Gondiparla,
Kurnool, Andhra Pradesh – 518 004 **......Appellant**

VERSUS

Commissioner of Central Tax
Tirupati - GST
9/86, West Church Complex, Amaravati Nagar,
MR Palli Road, Tirupati, AP – 517 502 **......Respondent**

Appearance
Shri Y. Sreenivasa Reddy, Advocate for the Appellant.
Shri V.R. Pavan Kumar, Authorized Representative for the Respondent.

Coram:
HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30254/2024

Date of Hearing: 26.10.2023
Date of Decision: 08.04.2024

[Order per: ANIL CHOUDHARY]

The appellant – M/s Shivtek Industries Pvt Ltd is in appeal against demand of Cenvat credit of Rs.76,88,124/-, which was availed on inputs consumed/utilized for production, at the work-in-progress stage, were destroyed in fire in the factory of the appellant during October 2016, vide the impugned Order-in-Original dt.19.12.2017 by the Commissioner.

2. The Brief facts are that the appellant is a manufacturer of Chlorinated Paraffin (CP) falling under Chapter 38 and used in manufacture of PVC, plastic and leather products. The appellant manufactures various grades of CP depending on usage of the product in different applications. The CP of various grades vary in respect of their thermal stability, viscosity, refractive index, colour, etc.

3. CP is manufactured by chlorination of liquid paraffin and adding of Olefins and other materials in the process. Liquid Paraffin consists of carbon chain C_9 to C_{30} or more. Olefins as unsaturated alkaline fall under Chapter 29 and Liquid Paraffin as saturated alkaline falls under Chapter 27. Each variety of liquid paraffin say C_9H_{20} or $C_{12}H_{26}$ or $C_{24}H_{50}$ have different characteristics. There are a number of PVC formulations manufactured from Chlorinated Paraffin and

Olefins. Some end products require mechanical strength, some require shining, some require electrical resistance, some require durability, some flame retardancy and some chemical resistance. As per requirement of the product, various chains of carbon of paraffin and olefins are blended. Once blended, the original input cannot be restored nor sold nor used for any other purpose other than in the finished product, which is intended to be manufactured. In support thereof, the appellant have annexed web pages from the website of the appellant containing technical details of the products in the appeal file.

4. The appellant imports Paraffins and Olefins in MS Tanks of ships and transported to the factory in tankers and are unloaded into different storage tanks. The appellant has 10 tanks wherein imported paraffin oil and chlorine are stored and 2 tanks wherein these products along with other items are blended. Once CP of a particular grade is planned for production, the paraffin oil and chlorine are pumped into the blending tanks for blending. The blended material is magnetically filtered to remove MS rust and after rust is removed in mechanical filters for long time into blending tanks with magnetic filters and mechanical filters with the help of circulating pumps, the blended material is issued for further production for each particular application. Once the raw materials are blended, it cannot be used for any purpose other than the product which is intended to be manufactured. Hence blended material is to be treated as work-in-progress. The blending of oil is done from various storage tanks as per final characteristic of plasticiser namely flexibility, whiteness, shining, transparency, electrical resistance and clarity. Thereafter, oil from blending tank 1–12 (any one at a time) is taken through pump P3 and NRV2 and magnetic filter F12 to Melter 1–6 where steam received from SRAAC Ltd is used for heating with temperature indicator in each of the Melter. The oil is heated and tested and sent through pump P4 in reactors, which are either glass lined or lead lined 1–4. Here, chlorine gas through pipeline is added through header and reaction initiated and temperature of heated mass is controlled by cooling water. Thereafter, gas of HCL and Chlorine is sent to Buffer, Vent Cooler and to Condenser C and finally to primary absorber (scrubbing) through Knock out drum. Primary absorber and secondary absorber react with water and HCL gas and convert it to 31–36% of HCL concentration. Chlorinated Paraffin of required percentage of chlorine of 40% to 70% is completed in 20–30 hours and compressed air is used for cleaning any epoxy added for heat stability. Thereafter, Chlorinated Paraffin is packed in 250 kgs after cooling and HCL is dispatched in tankers.

5. During October 2016, a major fire broke out in the factory of the appellant resulting in huge loss of about Rs.10 Crores. The appellant had immediately intimated the incident to the Range Officer vide letter dated 09.11.2016 and in the said letter it was clearly mentioned the details of goods destroyed namely, the materials in blending tanks, in reactors, in storage tanks, finished products, packing materials, etc., along with Certificate of Chartered Accountant. The appellant also admitted that they have calculated the total duty involved in inputs, WIP products, finished goods and packing materials at Rs.86,45,501/-. Thereafter, the appellant had filed a letter/representation dt.28.12.2016 before the Commissioner intimating about the fire accident giving details of materials destroyed and praying for remission of duty on all the goods including inputs, packing materials, etc., though there is no legal requirement of such remission of duty availed as credit. It was clearly mentioned in the said application quantity of paraffin oil issued for blending and also in the process and this WIP material consists of major portion of the material destroyed.

6. The appellant had received a letter dated 22.06.2017 intimating that the Commissioner sanctioned remission of duty of Rs.4,17,438/- only on the materials/manufactured goods destroyed. The said letter did not contain the details. Thus, the appellant filed letter dated 20.07.2017 to the Commissioner inter-alia submitting –

a) the Cenvat credit taken is also believed to be treated as duty and remission is to be given from reversal.
b) Credit need not be reversed on inputs issued for production and comprised in WIP or semi-finished goods.
c) They had re-credited Rs.81,77,588/- in Tran-1 to avoid transitional problems under the GST Act, 2017.

7. The learned Commissioner's vide letter dated 19.12.2017 granted remission of duty being further amount of Rs.18,026/- on the ground that all other items destroyed are to be treated as inputs. He intimated the appellant the following in the said letter:-

a) Remission of Rs.4,71,438/- on Chlorinated Paraffin is already granted by Joint Commissioner.
b) Rs.18,026/- which is duty on HCL, a by-product is being allowed now.
c) Though the oil in blending tanks is in WIP stage, since it had not reached the stage of manufacture, same is to be treated as inputs and hence, no remission applies to this and Rs.68,58,855/- being credit taken on the

inputs is to be reversed. Further, the appellant himself and the CA in his certificate mentioned the blended material as raw material.

d) Blended oil in Melters and Reactors is also to be treated as inputs and Rs.4,18,325/- being credit taken on inputs is to be reversed.
e) HDPE Drums and MS Drums being packing materials, credit of Rs.2,70,818/- is to be reversed.
f) ISO Resin is to be treated as input and hence Rs.6,188/- availed on the same is to be reversed.
g) Excess credit of Rs.1,33,938/- reversed shall be claimed following procedure under Section 11B of the CE Act, 1944.

8. As no speaking order was passed by the Commissioner, the appellant was advised that no appeal may be filed in absence of a speaking order. Further the appellant by letter dated 26.12.2017, urged before the Commissioner that there is no requirement of reversal of credit since the material was already issued for production and available in the blended tanks or in reactors and hence the destruction of raw materials or inputs is not destroyed as such, and already issued for production forming part of WIP, there is no need for reversal of the same. Further urged that treating the WIP goods as inputs is wrong and there is no obligation to pay duty on such WIP goods. Appellant also informed that as due date for taking of credit in Tran-1 date is nearing, they have taken credit in Tran-1, but the same will not be utilised. The appellant had subsequently reversed the said amount of credit in the GST regime.

9. Thereafter, on not receiving any response and on being so advised that even the letter of the Commissioner dt.19.12.2017 having civil consequences on the appellant, is appealable, the appellant has filed the present appeal inter alia on the following grounds:-

a) Directing reversal of Rs.72,77,180/- being the Cenvat credit on Paraffin oil which is in blending tanks and reactors in WIP stage and credit of Rs.2,70,818/- availed on HDPE drums and MS drums being packing materials already utilized for packing the finished product, treating the same as inputs invoking CBEC Circular dt.09.12.2009, without issue of any SCN and without passing a speaking order is illegal.
b) Treating the WIP material as raw material on the ground that the appellant himself mentioned the same as raw material and CA had also mentioned it under the head raw material is improper. The appellant had clearly mentioned the Paraffin Oil as 'issued for process in blending tank' in the letter addressed to the Commissioner. The CA certificate also

mentions it as Oil in blending tanks. CA certificate was issued for the purpose of claiming insurance and the same cannot be relied upon for ordering the reversal of credit.

c) The contention of the Commissioner that the appellant himself had asked for remission is incorrect. The appellant asked remission of the credit availed treating this as duty under Rule 3 of CCR, though no such provision exists in the law. He did not ask for remission from reversal of credit. The same could have denied on legal grounds, stating that no such provision exists.

d) It is a settled legal position that credit availed on inputs existing in WIP material cannot be demanded. Rule 3(5B) of CCR provides for reversal of credit taken on inputs if they are destroyed as such. Rule 3(5C) provides for reversal of credit availed on inputs used in manufacture of finished goods on which remission is allowed. There is no provision in CCR for reversal of credit availed on inputs destroyed after issue for manufacture and destroyed in WIP stage.

e) This Tribunal in the case of Granules India Ltd vs CCE, Visakhapatnam [2019 (6) TMI 191-CESTAT Hyderabad] while discussing the CBEC Circular dt.09.12.2019 clearly held that the said circular has not cited any legal provision to demand reversal of credit on the inputs issued for processing and in WIP material and hence, no such demand can be made.

f) It is also a settled legal position that once the inputs are issued for production and in process material is destroyed, there is no provision to demand for reversal of credit taken on inputs. The appellant cites the following decision in this regard:

   i) Granules India Ltd vs CCE, Visakhapatnam [2019 (6) TMI 191 – CESTAT Hyderabad]
   ii) Monarch Self Adhesive Tapes & Foams (I) Pvt Ltd vs CCE, Pune [2017 (9) TMI 1374 – CESTAT Mumbai]
   iii) Big Bags International Pvt Ltd vs CCE, Bangalore [2017 (12) TMI 380 – CESTAT Bangalore]
   iv) CCE, Chennai vs Fenner India Pvt Ltd [2017 (307) ELT 516 (Mad)]
   v) CCE, Rohtak vs Park Nonwowen Pvt Ltd [2015 (323) ELT 634 (Tri-Del)]
   vi) Nectar Lifesciences Ltd vs CCE, Chandigarh [2013 (293) ELT 247 (Tri-Del)]
   vii) CCE vs Spectra Specialities [2009 (3) TMI 986 – Bombay High Court]

10. Opposing the appeal, Learned AR for revenue relies on the impugned order/letter dated 19.12.2017 of the learned Commissioner.

11. Having considered the rival contentions, we find that under the Cenvat Credit Rules, Rule 3(5) provides – when inputs or capital goods on which credit has been taken are removed as such from the factory or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice. Further rule 3(5C) of CCR provides – where any goods manufactured or produced by the assessee, the payment of duty is ordered to be remitted under Rule 21 of Central Excise Rules 2002, the Cenvat credit taken on inputs used in the manufacture or production of said goods and the Cenvat credit taken on input services used in or in relation to the manufacture or production of said goods, shall be reversed.

12. Under the facts and circumstances, it is an admitted fact that the work in progress or semi-finished goods are no longer inputs. Thus, we hold that no case is made out of inputs removed as such from the factory on the destruction of WIP or semi-finished goods. In case of destruction of goods/inputs, the liability is restricted to reversal of Cenvat credit on such inputs only. We hold that the appellant is not required to reverse Cenvat credit on the inputs already issued for production forming part of WIP or semi-finished goods.

13. In view of our findings and observations, we allow the appeal and set aside the impugned order. It is clarified that the appellant is not required to reverse the Cenvat credit of Rs.76,88,124/- with respect to inputs forming part of work in progress/semi-finished goods destroyed in fire. The appellant shall be entitled to consequential benefits, in accordance with law.

14. Appeal allowed.

(Pronounced in the Open Court on 08.04.2024)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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