IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No.E/4/2012 and E/70313/2013

(Arising out of Order-in-Appeal No.34/Kol-I/2011 dated 29.09.2011 and Order-in-Appeal No.22/Kol-I/2012 dated 27.12.2012 all passed by the Commissioner of Central Excise (Appeal –I), Kolkata and)

M/s. Kosmos Healthcare Pvt. Ltd.

Applicant (s)/Appellant (s)

Vs.

Commissioner of Central Excise, Kolkata-I

Respondent (s)

Appearance:

Shri S.Bagaria, Advocate & Shri I.Banerjee, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Suptd. (AR) for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI C. J. MATHEW, TECHNICAL MEMBER

Date of Hearing/Decision:-20.03.2018

ORDER NO.FO/75656-657/2018

Per Dr. Satish Chandra,

1. The present appeals are filed against Order-in-Appeal No.34/Kol-I/2011 dated 29.09.2011 and Order-in-Appeal No.22/Kol-I/2012 dated 27.12.2012 all passed by the Commissioner of Central Excise (Appeal –I), Kolkata.

2. The brief facts of the case are that the appellant is 100% exporting the 'Gift Box' of the natural care and availing rebate. In the gift box there are four products out of which two are manufactured by the appellant and the other two items have been bought from the open market. All the four items put in a box and appellant has paid duty and claimed that cenvat credit may be allowed being inputs. Same was disallowed by the lower authorities. Being aggrieved, present appeal is before the Tribunal.

3. With this background we heard Shri S.Bagaria, Advocate for the appellant and Shri S.Mukhopadhyay, Suptd. (AR) for the respondent.

4. Ld. Counsel for the appellant relied on the ratio laid down in the following cases – (i) CCE vs. Ajinkya Enterprises [2013(294) ELT 203 (Bom.)] and (ii) CCE & C vs. Creative Enterprises [2009(235) ELT 785(Guj.)]. In both the cases, the goods were not exported and no rebate was claimed. But in the instant case, appellant is enjoying rebate for export of the goods. So, the facts of those cases are different with that of the instant case.

5. On merit, it appears that appellant has manufactured only two items and two items were bought from the open market and by putting all the four items in a box (gift box) the same was exported. When export has been made and rebate has been claimed, in this situation the appellant is not entitled for double benefit as per section 2(k) of the Cenvat Credit Rules, 2004.

5. When it is so, we find no reason to interfere with the impugned order which is hereby sustained alongwith the reasons mentioned therein.

6. In the result, the appeals filed by the appellant are dismissed

(Dictated and Pronounced in the Open Court)

S/d.
(Justice Dr. Satish Chandra)
President

S/d.
(C. J. MATHEW)
MEMBER (Technical)

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