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

Appeal No. E/366/2008

(Arising out of Order-in-Appeal No. 09/SH/CE(A)/GHY/2008 dated 20.02.2008 passed by Commissioner of Customs & Central Excise (Appeals), Guwahati)

Commissioner of Central Excise, Shillong
Applicant (s)/Appellant (s)

Vs.

Kamakhya Cosmetics & Pharmaceuticals Ltd.
Respondent (s)

Appearance:

Shri K.Choudhary, Suptd.(AR) for the Appellant (s)
Shri N.K.Choudhary, Advocate for the Respondent (s)

CORAM:
Hon'ble SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision:- 04.05.2018

ORDER NO. FO/75878/2018

Per Shri V. Padmanabhan

1. The present appeal is filed against Order-in-Appeal No. 09/SH/CE(A)/GHY/2008 dated 20.02.2008 . The respondent has a factory situated in Meghalaya and was availing the Area Based Exemption for North Eastern States under the Notification No.32/99-CE dated 08.07.1999. As per the terms of the notification, the respondent was availing cenvat credit and utilizing the same for payment of duty and subsequently claiming and getting refund of such duty paid. The dispute pertains to the period January – March, 2003. In this regard it is necessary to record that the said Notification No. 32/99-CE dated 08.07.1999 was amended vide Notification No.61/2002-CE dated 23.12.2002. The said amendment is reproduced below for ready reference:

Sl.No.	Notification No. and date	Amendment
1.	32/99-Central Excise	In the said notification, in the

	dated the 8th July, 1999	second paragraph, in clause (b), the following proviso shall be added, namely:- "Provided that such refund shall not exceed the amount of duty paid less the amount of the CENVAT credit availed of, in respect of the duty paid on the inputs used in or in relation to the manufacture of goods cleared under this notification".

The respondent used to file claim for refund on the monthly basis and the refund claims for the period January, February and March, 2003 was considered and sanctioned by the Original Authority. The notification was subsequently further amended vide Notification No.65/2003-CE dated 06.08.2003 in which further restrictions were imposed in the availment of utilization of cenvat credit for payment of duty on the final product. The department worked out the refund eligibility for the period January – March, 2003 subsequent to the sanction of such refunds and restricted such refund further. The relevant refund order was challenged by the respondent before the Commissioner (Appeals) which was decided by the impugned order in which the issue was decided in favour of the respondent. Aggrieved by the same the present appeal has been filed by Revenue.

2. With this background we heard both sides and perused the appeal record.

3. Ld. DR justified the order of the refund sanction authority and contended that the impugned order may be modified.

4. On the other hand the ld. Advocate for the respondent justified the impugned order and submitted that department has restricted the refund claim for the period January-March, 2003 on the basis of the amendments carried out in the Notification No. 32/99-CE dated 08.07.1999 vide Notification No.65/2003-CE dated 06.08.2003. He submitted that the refund claims for the period January-March, 2003 were required to be processed only in the light of the amendments carried out in the notification vide Notification No.61/2002-CE dated 23.12.2002. He finally

submitted that when the refund claims are evaluated on the above basis, the impugned order is sustainable.

5. In terms of the Notification No. 32/99-CE dated 08.07.1999, as amended vide Notification No.61/2002-CE dated 23.12.2002 ibid, the refund is to be worked out by restricting the same to the amount of duty paid less the amount of cenvat credit availed in respect of the duty paid on the inputs used in or in relation to the manufacture of the goods cleared under this notification. Further restrictions were imposed by the amendment under Notification No.65/2003-CE dated 06.08.2003 which appears to have been taken into account in restricting the refund claim by Revenue for the period January –March, 2003. We find no jusitification for such restriction. The Commissioner (Appeals) in the impugned order has carefully examined and discussed these points in para 4 which is reproduced below:

> "*4. Perused the case records and considerd the appellant's submissions during the course of personal hearing. I have also perused the copies of orders dated 13.2.03 and 13.3.03 by which the refunds for the months of January'03 and February'03 respectively in terms of notification no.32/99-CE dated 8.78.99 as amended was given to the appellant. In these orders the Deputy Commissioner held that during the months the amount paid through cenvat crdit account was higher thatn the amount of Cenvat Credit availed on inputs used in manufacture or finished products cleared under the said notification and he therefore held that the entire amount paid through PLA was refundable. Again, while disposing the refund for March'03 the Deputy Commissioner held that the total duty paid during Jan'03 to Mar'03 was Rs.1,66,05,791 and cenvat credit availed of during that period was Rs.53,27,243/- and so amount refundable was Rs.1,66,05,791/- minus Rs.53,27,243/-. I have perused notification no.61/2002-CE dated 23.12.02 and find that it provides that refund allowable under the North East Notifications shall not exceed the amount of duty paid less the amount of cenvat credit availed of in respect of duty paid on inputs used in or in relation to the manufacture of goods cleared under the corresponding exemption notification. I do not find anything in the notification to suggest that the entire canvat credit availed in a month has to be deducted while allowing the refund for the month. CBEC vide Circular No.683/74/2002-CX dated 24.12.2002 clarified this matter. CBEC instructions under D.O.F. No.334/1/2003-TRU dated 28.02.03 also support this view. This position was unchanged till issuance of notification No.65/03 dated 6.8.03. In his orders dated 13.2.03 and 13.03.03 the Deputy Commissioner had correctly appreciated the matter. He was not legally correct in deducting the entire credit availed during January'03 to Mar'03 form the total duty paid during the period. The proper course of action would have been to ascertain the total cenvat credit availed during Mar'03 on inputs*

used in manufacture of final products cleared during the month under the said notification as had been correctly done in his orders dated 13.2.03 and 13.3.03.

6. In the light of the above discussions we find no reason to interfere with the impugned order and the same is hereby sustained.

7. In the result the appeal filed by the Revenue is dismissed.

(Dictated and pronounced in the Open Court)

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

S/d.
(V.Padmanabhan)
MEMBER (Technical)

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