IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

MA (ROA)-76127/17
& Ex.Appeal Nos.72057,72058/13

(Arising out of Order-in-Original No.09/Commr./CE/Kol.III/2012-13 dated 30.10.2012 passed by the Commissioner of Central Excise, Kolkata)

M/s Gena Pharmaceuticals
Shree Vijay Kanoria

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise, Kol.III

Respondent (s)

Appearance:

Shri B. N. Pal, Adv. for the Appellant (s)
Shri S. S. Chattopadhyay, Supdt. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 03.05.2018
Date of Pronouncement : 04.05.2018

ORDER NO - **FO/A/75972-75973/2018 & MO/75637/2018**

Per Dr. Satish Chandra :

For the reasons mentioned in the application, the M.A. for restoration of appeal is allowed. With the consent of both sides, the appeal is taken up for disposal on merit.

2. The present appeals have been filed against the Order-in-Original No.09/Commr./CE/Kol.III/2012-13 dated 30.10.2012 passed by the Commissioner of Central Excise, Kolkata.

3.1 Briefly stated the facts of the case are that the appellants are engaged in the manufacture of different verities of "P & P Medicaments". In their factory for manufacture of Medicaments, the appellant installed plants and machineries and also procured the different types of spares and of such plant and machineries and declared the same as capital goods. The appellants availed the cenvat credit on such spares, which were produced by them under proper duty paying documents from the different manufacturers/dealers.

3.2 On 14.07.2010 and 27.07.2010, the Department has conducted a search and stocks of the capital goods were verified. During the process, spare parts were not found. So, the claim of the appellant of cenvat credit on the capital goods was denied . Being aggrieved, the appellants have filed the present appeals.

3. With this background, we have heard Shri B. N. Pal, ld.Counsel for the appellant as well as Shri S.S.Chattopadhyay, ld.A.R. for the Revenue.

6. After hearing both sides and on perusal of record, it appears that the appellant is engaged in the manufacture of excisable goods, i.e. "P & P Medicaments", which attracts Central Excise duty. During the period under consideration, the appellant had already paid the Central Excise duty of Rs.8,70,40,793/-. During the course of argument, it was the submission of the ld.Counsel that the capital goods were laying in the factory meant for use in the manufacture of final product.

7. From the record, it appears for manufacturing of the product that the appellant needs the huge/big machinery. Spare parts became obsolete after some time, so they were replaced. It is the submission that the spare parts were inside the machine and obsolete old used spares parts were disposed of. Hence, on physical verification, the

same spare parts were not found. The same plea appears reasonable as the products cannot be stopped and spare parts will have to be changed inside the plant and machinery.

8. In the instant case, the duty demand was raised only for the reason that on physical verification, the some parts were not available, but Department has not verified the records pertaining to the sale of the obsolete and old parts. From the records, it is evident that new spare parts were purchased from the various manufacturers and dealers and payments were made by A/c Payee Cheque and the same were reflected in the Books of Account. The appellant's production was continued and they were paying huge amount of Excise duty. Without replacement of the parts, manufacturing is not possible.

9. In view of the above, we are of the view that the Department has not collected any corroborative evidence and the impugned order is travelled beyond the show-cause notice as per ratio laid down by the Hon'ble Supreme Court in the case of CC, Mumbai Vs. Toyo Engineering India Ltd. : 2006 (201) ELT 513 (S.C.).

10. In the light of the above discussions and by considering the totality of the facts and circumstances of the case, we find no reason to sustain the impugned order and the same is hereby set aside.

11. In the result, the appeal filed by the appellant is allowed.

(Pronounced in the open court on 04.05.18)

Sd/	Sd/
(V.Padmanabhan)	**(Justice Dr. Satish Chandra)**
Member (Technical)	**President**

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