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

Appeal No.E/156/2009, CO-59/2009

(Arising out of Order-in-Original No.13/Kol-VI/Commr./2008 dated 15.12.2008 passed by the Commissioner of Central Excise, Kolkata-VI Commissionerate)

Commissioner of Central Excise, Kolkata-VI

Applicant (s)/Appellant (s)

Vs.

M/s. Coates of India Ltd.

Respondent (s)

Appearance:

Shri D.Haldar, AC(AR) for the Appellant (s)
Shri H.Jajodia, CA for the Respondent (s)

CORAM:
Hon'ble SHRI P.K.CHOUDHARY, Member (Judicial)
Hon'ble SHRI Bijay Kumar, Member (Technical)

Date of Hearing/Decision:- 18.05.2018

ORDER NO.FO/76197/2018

Per Shri P.K.Choudhary

The respondent is a manufacturer of printing ink, paints and varnish, reducers, retarder etc. classifiable under Ch.32 & 38 of the CETA, 1985. Show Cause Notice was issued for alleged irregular availment of cenvat credit on the inputs namely 'reflex blue', 'diacetone alcohol', 'cyclohexanone' etc. recived/procured from their other units on stock transfer basis. The adjudicating authority dropped the proceedings initiated vide the show cause notice. Being aggrieved with the Order of the Commissioner of Central Excise, Revenue has preferred this appeal before this Tribunal. The respondent assessee have filed cross objection.

2. Ld. AC(AR) on behalf of the appellant Revenue re-iterated the grounds of appeal.

3. Ld. Counsel appearing on behalf of the respondent assessee submits that the issue has been decided in various decisions of the Hon'ble Tribunal. He also referred to the Hon'ble Tribunal's decision in the case of Exide Industries Ltd. vs. Commissioner of Central Excise, Haldia [2008(226) ELT 249 (Tri.-Kolkata)].

4. Heard both sides and perused the appeal records.

5. We find that the period of dispute is for the period April – December, 2001 and November, 2002 to February, 2003. The appellants are having six factories strategically located in different parts of the country viz. at Mumbai, Noida, Ahmedabad, Delhi, Madras and Kolkata. Factories at Mumbai, Noida and Kolkata are called the base factories and the other factories are called matching Centres. In these base factories, the major quantity of the goods are manufactured. The substantial part of total purchase of raw material, both indigenous and imported, also take place in these base factories. The base factories send the semi-finished printing ink to other matching centres as stock transfer on payment of excise duty. The matching centres take credit of the duty paid on such transfer and further process the said semi-finished product according to the demand of the customers of their respective regions. Similarly, different kinds of raw materials, purchased in bulk at one base factory, are also transferred to different matching centres and other base factories too on payment of appropriate Central Excise duty. It is the case of the Revenue that the Respondent assessee have contravened the provision of Rule 57AE(3) of the erstwhile Central Excise Rules, 1944 which subsequently changed to rule 7(4) of the Cenvat Credit

Rules, 2001 read with Ministry of Finance's M.F.(D.R.)F.No.B-4/7/2000-TRU dated 03.04.2000 and have availed credit on the basis of stock transfer invoices and utilized the same towards payment of duty of their final products.

6. We find that the issue is no more resintegra and is covered by the decision of the Hon'ble Tribunal in the case of Exide Industries Ltd. vs. Commissioner of Central Excise, Haldia (Supra). The relevant portion of the same are reproduced as under:

> ***"2.3*** *He also submitted that Revenue made out a case without properly appreciating the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Nagpur v. M/s. Ballarpur Industries Ltd. reported at 2007 (215) E.L.T. 489 (S.C.). The Apex Court held that show cause notice being foundation of a proceeding, if that was baseless for no sanction of law to deny the benefit, proceeding shall not proceed against the Appellant. Although the judgment was delivered by Hon'ble Apex Court under the earlier Rule 57CC of Central Excise Rules, 1944, whether sale was pre-requisite for availing modvat credit in respect of stock transfer to one unit by another, the ratio laid down in the Judgement governs the field and applies to the Appellant. He specifically drew attention of the Bench to definition of "input" under Rule 57AA of Central Excise Rules, 2000 and submitted that said "input" is not required to be "purchased" by a unit claiming CENVAT credit. He further argued that 57AB permits a manufacturer to avail credit without any embargo of "sale". Similarly 57AC provides conditions for allowing CENVAT credit. Nowhere in the Rule, essential condition of purchase is required to be satisfied. Use of "input" being a requirement for grant of CENVAT credit, mode of acquisition of input is immaterial.*
>
> ***2.4*** *Learned Counsel also drew our attention to Notification No. 13/03 dated 1-3-2003 and submitted that entire difficulty in interpretation was obviated substituting the word 'procured' in place of the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002. Therefore procurement is a requirement and use of input is another essential requirement to avail CENVAT credit and any construction contrary to that would defeat of spirit of CENVAT credit in absence of ultimate finding that Modvated input has not yielded revenue on clearance of finished goods.*

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx Xxxxxxx

4.3 *Relevant period involved in the proceeding was April, 2000 to March, 2002 raising aforesaid demand on the allegation that input received by one unit from its sister unit were not entitled to CENVAT credit. There is nothing on record to state whether inputs so received were not used in manufacture. Also record does not demonstrate that input had not undergone suffering appropriate duty before procurement. The order of adjudication also fails to exhibit that "purchase" is an essentiality to claim CENVAT credit under law even if the term "procurement" being substituted in Rule 7(4) of CENVAT Credit Rules, 2002. There is no doubt that Notification No. 13/03, dated 1-3-2003 has substituted the word 'procured' for the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 w.e.f. 1-3-2003. But Notification No. 27/2000, dated 31-3-2000 which sought to amend CENVAT Credit Rules, 2000 does not prohibit to read the said substitution for the period earlier to that, under challenge. Definition "inputs" under Rule 57A of Central Excise Rules, 1944 read with Rule 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is sine qua non. Therefore Notification No. 13/2003, dated 1-3-2003 guides to appreciate legislative intention. Further, decisions cited by learned Counsel also brings its case in all four. When a levy is not expressly designed by law by a statutory provision, respective Rule which grants credit cannot be presumed to be a charging section by any analogy"*

7. In view of the above discussions we find no infirmity in the impugned order and the same is hereby sustained.

8. In the result, the appeal is dismissed and the cross objection is disposed of.

(Operative portion of the order already pronounced in the Open Court)

S/d.
(P.K.Choudhary)
Member (Judicial)

S/d.
(Bijay Kumar)
Member (Technical)

ss