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

Appeal No.ST/273/2009, CO-8/2010

(Arising out of Order-in-Original No.CE/Shillong No.05/2009 dated 11.09.2009 passed by the Commissioner of Central Excise, Shillong)

Commissioner of Central Excise, Shillong
…APPELLANT(S)

VERSUS

M/s Hindusthan Paper Corporation
…RESPONDENT (S)

APPEARANCE
Shri D.Halder, AC(AR) for the Appellant
None for the Respondent.

CORAM:
HON'BLE SHRI P. K. CHOUDHARY, JUDICIAL MEMBER
Hon'ble SHRI V.Padmanabhan, Member (Technical)

Date of Hearing/Decision : 15.11.2018

ORDER NO.Fo/76936/2018

Per Bench :

The present appeal has been filed by the Revenue against the Order-in-Original No. CE/Shillong No.05/2009 dated 11.09.2009. The respondent is engaged in the manufacture of paper and paper products falling under Chapter 48 of the Central Excise Tariff Act, 1985. The period of dispute is 01.05.2006 to 29.02.2008. They availed the benefit of cenvat credit on capital goods, inputs/inputs services. Their final products included dutiable as well as exempted. But they failed to maintain separate accounts for the inputs used as required under Rule 6(2) of the Cenvat Credit Rules, 2004. The department was of the view that they were required to pay an amount of equal to 10% of the value of exempted products cleared as required under Rule 6 (3) (a) of Cenvat Credit Rules, 2004. Accordingly, demand was raised by issue of show cause notice dated 21.01.2009. The adjudicating authority dropped the entire demand in the impugned order and the same has been challenged by the Revenue in the present appeal.

2. Inspite of notice none appeared on behalf of the respondent. None also appeared on 23.12.2016,11.06.2018 and 10.07.2018. Revenue is represented by Shri D.Halder, AC(AR).

3. Since the respondent is not represented during today's hearing as well as several opportunities given in the past and since the appeal filed in 2009, cannot be kept pending endlessly, we take up the issue for decision on merit.

4. Heard ld. DR for the Revenue who emphasized the grounds of appeal.

5. It is seen that the demand has been made in the show cause notice on the basis of Rule 6(3) of Cenvat Credit Rules, 2004. The appellant has availed cenvat credit on inputs/inputs services but failed to maintain separate records for the inputs /inputs services in the manufacture of final product liability to payment of excise duty as exempted final products. Consequently, in terms of the above Rule, they are required to pay an amount @10% of the value of the exempted final products. But it is seen that the total demand worked out is Rs.17.41 Crores which is unreasonable when the total cenvat credit availed on the inputs/inputs services amounts to only about Rs.1.85 Crores. It is further seen that the respondent on its own has computed the proportionate share of inputs/inputs services attributable to exempted final products as Rs.90.94 lakhs and reversed the same. Ld. Commissioner has accepted this reversal as sufficient and set aside the demand made in the show cause notice.

6. It is seen that Rule 6 of the Cenvat Credit Rules, 2004 was subsequently amended on 08.05.2010 making provision for proportionate

reversal in the circumstances existing in the present dispute. Such amendment was also made effective retrospectively for the period 10.09.2004 to 31.03.2008. The 8th Schedule of the Finance Act, 2010, carrying out the above amendment further specified that the manufacturer shall pay interest @24% from the due date till the date of payment of the said amount. The determination of the proportionate amount to be reversed is to be supported by a certificate from the Chartered Accountant or Cost Accountant.

7. We note that the retrospective amendment was not in place during the period when the Commissioner adjudicated the dispute. But it is on record that an amount claimed to be proportionate has already been reversed by the respondent. Under the circumstances we set aside the impugned order and remand the matter to the adjudicating authority to pass a fresh order in the light of the amendment carried out vide the Finance Act, 2010 in the Cenvat Credit Rules, 2004. Respondent is directed to substantiate their claim for proportionate reversal with support of a certificate from the Chartered Accountant or Cost Accountant as specified in the amended Rules.

8. The appeal filed by the revenue is allowed by way of remand. Cross Objection is also disposed of.

(Dictated and Pronounced in the Open Court)

(P. K. CHOWDHARY)
MEMBER (JUDICIAL)

(V.Padmanabhan)
MEMBER (TECHNICAL)

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