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

Excise Appeal No. 77772/2018

(Arising out of Order-in-Appeal No.28/Kol-I/2018 dated-21/02/2018 passed by the Commissioner of CGST & Central Excise, (Appeal-I), Kolkata)

M/s. Eveready Industries India Ltd.

Applicant (s)/Appellant (s)

Versus

Commissioner of CGST
& CX, Kolkata South

Respondent (s)

Appearance:

Sri Harsh Shukla, C.A. for the Appellant (s)

Shri A.K. Biswas, Supdt. (A.R.) for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of Hearing/Decision :- 06.02.2019

ORDER NO: FO/75598/2019

PER SHRI P.K. CHOUDHARY

The facts of the case in brief are that the appellant M/s. Eveready Industries India Ltd., Unit : National Carbon Plant, 1, Taratala Road, Kolkata-700 088 is engaged in the manufacture of dry cell batteries, classifiable under Chapter Sub-Heading 85061000 of the third schedule to the Central Excise Tariff Act, 1985. The appellants had availed Cenvat Credit on dry cell batteries supplied by one of their sister unit located in Lucknow amounting to Rs.13,882/- during the accounting year 2012-13 vide RG 23A Part-II Sl. No. 178 in the month of November, 2012. It is the case of the Department that dry cell batteries being the finished product are not eligible for availment of Cenvat Credit and dry cell batteries procured and exported to Nepal as such without being put to use in any way in the factory of manufacturer of its final products i.e. dry cell batteries. The Audit Team issued spot memo dated 4/6/2013. In reply to the spot memo, the appellants submitted that 10800 pcs. of batteries were brought from their Lucknow Plant for exporting to Nepal since they were not having sufficient stock at Kolkata to execute that order. The same was exported under cover of excise invoice No. 747 dated 22.11.2012. The adjudicating authority confirmed the demand of Cenvat credit of Rs.13,882/- under Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 alongwith interest and imposed a penalty of equal amount under the provisions of Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal, the Ld. Commissioner (Appeal) upheld the adjudication order and rejected the appeal. Hence the present appeal before the Tribunal.

2. The Ld. Counsel appearing on behalf of the appellant submits that the processes undertaken by them definitely amounts to manufacture. He, further referred to the definition of manufacture in Section 2 (f) (iii) which reads as under:

> " (i) ....
>
> (ii) ....
>
> (iii) *which, in relation to the goods specified in the Third Schedule, involves packing or repacking of such goods in a unit container or labelling or re-labelling of containers including the declaration or alteration of retail sale price on it or adoption of any other treatment on the goods to render the product marketable to the consumer and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labour in the production or manufacture of excisable goods, but also any person who engages in their production or manufacture on his own account".*

He further, submits that activities like testing and packaging were done on such dry cell batteries so received from Lucknow Unit and then exported to Nepal without payment of duty under letter of undertaking. It is his submission that since the dry cell batteries fall under Central Excise Tariff Heading No. 85061000 and are covered in 3rd Schedule to the Central Excise

Tariff Act and as per Section 2 (f) (iii) of Central Excise Act, any activity covered on the goods would tantamount to manufacture. Since they have procured such dry cell batteries by importing the same, Cenvat Credit on such inputs had been availed by them. Further, export of batteries from plant after proper inspection, checking and testing etc. is manufacturing process within the meaning of 2 (f) (iii)of the Act. The allegation of clearance of the same for export ‘as such’ is not correct. Further, he submits that there are several decisions of the Tribunal wherein it has been held that when the final product is exported, the duty on the final product as well as the duty on inputs are eligible to be reimbursed. Therefore, even if the final product is not dutiable or even if the process does not amount to manufacture, Cenvat Credit taken is admissible since the whole exercise would be revenue neutral and the exporter would not have availed any double or multiple benefits. He cites the decision of the Tribunal in the case of BASF India Ltd. Vs. CCE-2009 B(245) ELT 381(Tri.).

3. The Ld. A.R. reiterates the order of the Lower Authorities.

4. Heard both sides and perused the appeal records. I observe that the adjudicating authority has disallowed the Cenvat Credit of Rs.13,882/- taken on the basis of invoice issued by one of the appellant’s sister unit located at Lucknow in respect of supply of dry cell batteries. On the premise of it, the finished products of the appellant cannot qualify as input. The Adjudicating authority has also mentioned that input means all goods used in the factory of manufacture of the final products excluding the goods which have no relationship whatsoever with the manufacture of the final products. The Ld. Commissioner (Appeals) in the impugned order has observed that the battery so procured from Lucknow unit were exported ‘as such’ to Nepal without being put to use in any way in the factory of manufacture of its final products i.e. dry cell batteries. It is the case of the Department that the dry cell batteries procured from the sister units of the appellant were held finished products and they were not subjected to any further manufacturing process in the appellant’s factory and were exported as such to Nepal. Accordingly, the Cenvat Credit availed by the appellant on the said product procured from their sister unit was termed as input. I also observe that the Commissioner (Appeals) has agreed to the pleas of the appellant that the activity like checking, inspection and packing of dry cell batteries tantamount

to manufacture in terms of Section 2(f) (iii) of the act. However, he alleged that the appellant had not produced any document before him to substantiate their claim.

5. I further observe from the records that the BSR (Balance of Store Report) /SSR (Stock Status Report) being financial records of the appellant shows that such dry cell batteries were taken as input and BSR shows that the dry cell batteries were entered after manufacture. Therefore, the documentary evidence shows that said goods were entered as inputs and were cleared as finished goods. I also observe that activity in question does not amount to manufacture. In that case the rebate claim of Cenvat Credit available on inputs used for manufacturing the said finished goods which had been exported to Nepal is liable to be made before the Department. However, as observed by this Tribunal in various decisions that even if the process does not amount to manufacture, the whole exercise is Revenue Neutral and therefore, the appellant are eligible for Cenvat Credit. The contention of the Revenue is on a very narrow interpretation of the definition of 'manufacture' and the processes done by the appellant would definitely amount to manufacture in terms of the definition of the Chapter note.

6. In view of the above discussions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefits.

(Operative part of the order already pronounced in the Court)

P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-