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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.77129 of 2018

(Arising out of Order-in-Appeal No.18/HWH/XAP-55 & 28/2017-18 dated 28.02.2018 passed by Commissioner of CGST & Central Excise, Kolkata North Commissionerate, Kolkata.)

M/s. ITC Limited – Tribeni Unit
(PSPD, Unit: Tribeni, P.O.Chandrahati, District Hooghly,
West Bengal-712504.)

...Appellant

VERSUS

Commissioner of CGST & C.EX, Kolkata North Commissionerate
.....Respondent
((i) Assistant Commissioner, Central Excise, Chandannagar Division,
Howrah CGST & CX Commissionerate.
(ii) Commissioner, CGST & CX, Kolkata North Commissionerate at GST Bhawan,
Room No.254, Shantipally, Rajdanga Main Road, Kolkata-700107.)

WITH

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APPEARANCE

Shri Arnab Chakraborty, Advocate for the Appellant (s)
Shri A.K.Biswas, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 77067-77068/2019

DATE OF HEARING : 8 November 2019
DATE OF DECISION : 8 November 2019

P.K.CHOUDHARY :

The Appellant is engaged in the business of manufacturing paper and paper products, classifiable under Chapter 48 of the Central Excise Tariff Act, 1985. For the purpose of manufacturing the said goods, the Appellant is required to operate various machines at its factory. The said machines are made up of several components including the Rope Carrier System, which uses nylon rope to facilitate uninterrupted movement of paper pulp through certain processing sections. On account of the wear and tear sustained by such nylon ropes, they are periodically replaced by the Appellant by procuring the same on payment of duty. Therefore, the Appellant availed Cenvat credit of the said duty by treating the nylon ropes as capital goods, as per the definition under Rule 2(a) of the Cenvat Credit Rules, 2004. The period of dispute in the present appeals is from 01st July 2014 to 31st October 2015.

2. The Appellant had availed Cenvat credit of Rs. 68,390/- for the period from 01st July 2014 to 31st January 2015 and of Rs. 23,310/- for the period from 01st February 2015 to 31st October 2015 in respect of nylon ropes and Flat Galvanised IR Strips. The Departmental officers were of the view that the nylon ropes and Flat Galvanised IR Stripson which the Appellant had availed Cenvat credit did not qualify as 'capital goods' as per the said Rules. Accordingly, two Show Cause Notices were issued to the Appellant proposing reversal of the Cenvat credit, so availed irregularly, along with interest as per Rule 14 of the Cenvat Credit Rules read with Section 11A and Section 11AB/Section 11AA of the Central Excise Act, 1944. The Notices also proposed imposition of penalty as per Rule 15(2) of the Cenvat Credit Rules read with Section 11AC of the Central Excise Act, 1944.

3. The Adjudicating Authority observed that the said goods are not constituent parts of the machine and therefore, cannot be treated as capital goods. Accordingly, he confirmed the averments made in the Show Cause Notices. Aggrieved by the Adjudication Orders, the Appellant filed an appeal before the First Appellate Authority.

4. The First Appellate Authority observed that the said nylon ropes did not qualify as essential components and therefore, cannot be treated as a component of the paper machine. He went on to further observe that nylon rope is neither a component, spare part nor an accessory of the paper manufacturing machine. Accordingly, the First Appellate Authority upheld the Adjudication Order in respect of nylon ropes and upheld the reversal of Cenvat credit of Rs. 60,728/- for the period from 01st July 2014 to 31st January 2015 and of Rs. 18,513/- for the period from 01st February 2015 to 31st October 2015. Hence, the present appeals before this Tribunal.

5. Heard both sides and perused the appeal records.

6. At the outset, I find that for the period from 2008 to 2014, the First Appellate Authority had decided the very same issue, as in the present case, in favour of the Appellant. The orders passed by the First Appellate Authority were not challenged before this Tribunal and therefore, it seems that the Department had accepted such orders. Therefore, the impugned order passed by the First Appellate Authority in the present case is hit by the Doctrine of Res Judicata. The First Appellate Authority ought to have followed the previous orders, as the issue was identical and even otherwise, I do not find any reason cited by the First Appellate Authority for not following the earlier orders.

7. Further, I find that the Appellant has furnished a certificate from the Chartered Engineer which certifies that nylon ropes are threaded through grooves located on the anterior portion of the dryer cylinders in the paper machine. It further states that nylon ropes are used to move the paper tail from the Press section to the Pope Reel section of the paper machine. Therefore, I find that without the use of such nylon

ropes, the paper tail cannot travel through the paper machine in the desired manner.

8. The Appellant has also drawn my attention to relevant pictures to establish that nylon ropes are a vital component of the paper machine. Further, I find that the Department has not furnished any inspection report or report of any other kind to substantiate their claim in respect of the operation of the paper machine.

9. In view of the above discussion, I find that the paper machine cannot function without nylon ropes and therefore, it is an essential component for the machine. Accordingly, the appeals filed by the Appellant are allowed.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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