IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Excise Appeal No. 50 of 2010

(Arising out of Order-in-Original No.40/Commr./CE/Kol-III/2009-10 dated October 14, 2009 passed by the Commissioner of Central Excise, Kolkata-III)

M/s. Bengal Waterproof Ltd.
(S. M. Bose, Road, P.O. Panihati, 24-Parganas (North))

Appellant

VERSUS

Commr. of Central Excise, Kolkata-III
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

Respondent

APPERANCE :
None for the Appellant
Mr. S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 75553/2023

Date of Hearing : 2nd June 2023
Date of Decision : 2nd June 2023

PER ASHOK JINDAL:

The facts of the case are that the appellant was engaged in manufacturing and clearing of rubber/footwear inter alia manufacturing of rubberized textile fabric falling under TSH No. 5906.99 of Central Excise Tariff Act, 1985 and utilized the same for manufacturing of pressure sore prevention bed (PSP bed) falling under CSH No. 9018.00 of Central Excise Tariff Act, 1985 which were cleared at nil rate of duty. Appellant is required to pay 8% of the value of exempted goods as duty. Therefore, proceedings were initiated against the appellant and matter was adjudicated. Demand of duty was confirmed along with interest and equal amount of penalty was imposed. Against the said order, appellant is before us.

2. No one appeared on behalf of the appellant nor any request of adjournment has been received.

3. Considering the fact that appeal can be disposed of at this stage, therefore, appeal is taken up for disposal.

4. Heard the Learned AR.

5. We find that the appellant had availed the credit in respect of input used in manufacturing of interim product i.e. rubberised textile fabric. The benefit of exemption was not admissible as the goods were liable to be charged at nil rate of duty. If no credit was taken moreover the said rubberised textile fabric being input used for manufacture of PSP which were cleared at nil rate of duty and consume for same purpose was not eligible for the benefit of exemption Notification No. 67/95-CE dated 16/03/1995. Therefore, the appellant was required to pay 8% of the value of PSP bed cleared by them without payment of duty.

6. We find from the facts of the case that it is clear that the appellant has paid 8% of the value of the rubberized textile fabric which in turn in use for manufacture of PSP, therefore, as the appellant has paid 8% of the value of rubberized textile fabric, which means that appellant has not taken the Cenvat Credit of 8% of the value of rubberised textile fabric. The similar issue came up before Tribunal in the case of Life Long Appliances Ltd. Vs. Commissioner, 2000 (123) ELT 1110, The Tribunal in the has under:-

> ***4.*** *The present appellant's case is identical. They were also producing exempted and dutiable goods from the same inputs which were procured and stored together. The exemption which they claimed was also subject to the same condition that Modvat Credit should not have been taken on the inputs used in the manufacture of the exempted goods. In order to satisfy these requirements they paid Central Excise Duty of 8% as fixed for such cases under Rule 57CC. Rule 57CC relates to "adjustment of credit on inputs used in exempted final products or maintenance of separate inventory and accounts of inputs by the manufacturer". This rule is specific to cases where adjustment of credit is required to be made as the inputs have gone into the production of exempted final products. Sub-rule (1) of this rule specifically provides that payment of duty at 8% may be done, if the manufacturer is not able to meet the requirement [under sub-rule (9)] of maintaining separate inventory and accounts of the receipt and use of inputs for the manufacture of goods on which exemption is claimed. Such payment of*

duty at 8% brings about the adjust (sic) of excess credit taken. In other words, it is equivalent to reversal of credit on inputs. Therefore, the appellant had satisfied the requirement of not taking Modvat Credit on the inputs used in the manufacture of exempted goods. Their case is specifically covered by Rule 57CC as well as the decision of Supreme Court with regard to not availing of Modvat Credit on inputs in the Chandrapur Magnet Wires (P) Ltd. case. The impugned order is, therefore, clearly erroneous. The same is accordingly, set aside and the appeal is allowed.

7. The above view was affirmed by the Hon'ble Supreme Court in the case as reported in 2006 (196) ELT A 144 (SC).

8. In view of this discussion, we hold that the appellant has paid 8% of the value of the exempted goods on which no credit has been taken by the appellant. Therefore, the appellant is not required to pay 8% of the value of PSP bed cleared by them. Therefore, impugned order is set aside.

9. In result, Appeal is allowed with consequential relief, if any.

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

Sd/-

(Ashok Jindal)
(Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja