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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 70758 of 2013

(Arising out of Order-in-Original No.06/Commissioner/CE/Kol-IV/2013 dated 25.04.2013 passed by Commissioner of Central Excise, Kolkata-IV.)

M/s. Sheela Foam Pvt. Ltd.
(Durgapur Expressway, P. O. Dankuni Coal Complex, Distt. Hoogly-712310)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-IV
(M. S. Building, 15/1, Strand Road, Kolkata-700001)

Respondent

With

Excise Appeal No. 70759 of 2013

(Arising out of Order-in-Original No.06/Commissioner/CE/Kol-IV/2013 dated 25.04.2013 passed by Commissioner of Central Excise, Kolkata-IV.)

Mr Satish Agarwal
M/s. Sheela Foam Pvt. Ltd.
Executive Accountant
(Durgapur Expressway, P. O. Dankuni Coal Complex, Distt. Hoogly-712310)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-IV
(M. S. Building, 15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :
Mr. Pravin Sharma, Advocate for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER NO.75124-75125/2024

Date of Hearing : 24 January 2024
Date of Decision: 24 January 2024

PER R. MURALIDHAR:

The Appellant is manufacturer of dutiable goods and conditionally/partially exempted goods @ 1%/2% against the normal rate. As per them, they were maintaining separate records for receipt of inputs and they were taking the Cenvat Credit only in respect of the dutiable goods. In respect of the partially duty exempted goods, they were not eligible to take the Cenvat Credit for input and input services. As they were not in a position to properly bifurcate the input services, they have taken the Cenvat Credit towards the entire input services received. They have reversed the proportionate Cenvat Credit in respect of the input service used in the manufacture of partially exempted goods. The Department issued the Show Cause Notice demanding differential duty in respect of the partially exempted goods, i.e. normal rate of duty less 1% or 2% Excise Duty already paid by the Appellant. After due process, the demands were confirmed.

2. The Learned Counsel relies on the case law of **Hello Mineral Water (P) Ltd. Vs. UOI-2004 (174) ELT 422 (All)** and other Tribunal decisions wherein it has been held that if the Cenvat Credit taken is reversed, the same would amount to non-availment of Cenvat Credit. He also relies on the judgment of **Chandrapur Magnet Wires (P) Ltd. Vs. Collector of C. Excise, Nagpur-1996 (81) E.L.T. 3 (S.C.).** Accordingly, he prays that the Appeal may be allowed on merits.

3. Apart from this, there is another demand of Rs. 3,01,070/- on account of the Cenvat Credit taken by them on GTA Services. The demand has been confirmed on the ground that the Appellant has taken the credit based on the Invoices which do not conform to the documents specified under Rule 9 of CCR, 2004. He submits that this allegation is not correct. The freight charges and the Service Tax are

paid by their Central Corporate office. This corporate office has ISD Registration and only based on the ISD Challans issued by the Corporate office, the Cenvat Credit on GTA Service has been taken.

4. The Learned AR reiterates the findings of the lower authorities and justifies the confirmed demands.

5. Heard both sides and perused the documents placed before us.

6. On going through the documents and case laws placed before us, we find that the issue is squarely covered by the case law of **Hello Mineral Water (P) Ltd. Vs. UOI-2004 (174) ELT 422 (All),** wherein it has been held as under:-

> ***17.*** *The question as to whether manufacturer can be treated as not having taken credit on the inputs used in the manufacture of final product, even though it was originally taken but subsequently reversed, has been decided by a five Member Bench of the Tribunal in the case of Franco Italian Company Pvt. v. CCE, 2000 (120) E.L.T. 792. The aforesaid five members Bench of the Tribunal after taking into account the ratio laid down by the Supreme Court in the case of Chandrapur Magnet Wire (P) Ltd. v. CC, Nagpur, 1996 (81) E.L.T. 3 has held as under :-*
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>> *"6. Drawing similar analogy we consider that subject to the reversal of Modvat credit taken with regard to the inputs which were utilised in the manufacture of duty free goods, the manufacturer could avail of the Modvat credit as well as full duty exemption under applicable small scale exemption notification with regard to some specified goods. Reference is answered accordingly.*
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>> *7. As a result the impugned order-in-appeal dated 28-1-1999 passed by the Central Excise is set aside and the appeal of Franco Italian Company (supra) is allowed subject to the conditions that Modvat credit taken of the duty paid on the inputs which were utilised in the manufacture of duty free goods, is reversed."*
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> ***18.*** *In view of the above decision we are of the opinion that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be*

given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage.

30. *In these circumstances the order of the Tribunal dated 1-10-2003 in so far as it relates to denial of the benefit of Notification No. 15/1994-CE is liable to be, and is hereby, set aside. The petitioner is thus entitled to the benefit of the said Notification No. 15/1994-CE, dated 1-3-2004 and reversal of Modvat credit on the inputs namely PVC granules used in the manufacture of PVC/PP bottles, which have been admittedly reversed by the petitioner, even though after clearance of the final product. [Emphasis supplied]*

7. Prior to this, the Hon'ble Supreme Court in the case of **Chandrapur Magnet Wires (P) Ltd. Vs. Collector of C. Excise, Nagpur-1996 (81) E.L.T. 3 (S.C.)** has held as under:-

> ***6.*** *It is true that the assessee has not maintained separate accounts or segregated the inputs utilised for manufacture of dutiable goods and duty free goods, as should have been done. The contention of the Department that in this situation, the assessee is not entitled to reverse the entries and get the benefit of the tax exemption is a question which merits serious consideration. There is no doubt that the assessee should have maintained separate accounts for duty free goods and the goods on which duty has to be paid. But our attention was drawn to a departmental circular letter on this problem in which it has been clarified by the Ministry of Finance as under :-*
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> > *"3. The credit account under MODVAT rules may be maintained chapterwise, MODVAT credit is not available if the final products are exempt or are chargeable to nil rate of duty. However, where a manufacturer produces along with dutiable final products, final products which would be exempt from duty by a notification (e.g. an end use notification) and in respect of which it is not reasonably possible to segregate the inputs, the manufacturer may be allowed to take credit of duty paid on all inputs used in the manufacture of the final products, provided that credit of duty paid on the inputs used in such exempted products is debited in the credit account before the removal of such exempted final products."*
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> *This circular deals with a case where the manufacturer produces dutiable final products and also final products which are exempt from duty and it is not*

reasonably possible to segregate inputs utilised in manufacture of the dutiable final products from the final products which are exempt from duty. In such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. <u>This can be done only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products.</u>

7. *In view of the aforesaid clarification by the Department, <u>we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods. [Emphasis supplied]</u>*

8. Since the issue is squarely covered by the above decisions, we set aside the demand of Rs. 58,91,501/-.

9. In respect of the Rs. 3,01,070/-, the Appellant claims that the Cenvat Credit taken by them towards GTA Services are backed up by proper documents. For this limited purpose, we remand the matter to the Adjudicating Authority. The Appellant is directed to submit all the documentary evidence.

10. The Adjudicating Authority should follow the principle of natural justice and decide the issue within four months from the date of communication of this order.

11. All the penalties on the Appellants and on the co-noticee, Mr. Satish Agarwal are set aside.

12. The Appellant is required to pay the confirmed demand, if any, on account of Cenvat taken on GTA Services, along with interest. However, the penalty on the same is set aside.

(Dictated and pronounced in the open court.)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Pooja