IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.

Appeal No. E/89138/2013
E/CO-91055/2014

(Arising out of Order-in-Appeal No. AV(196)19/2013 dt. 12.07.13 passed by the Commissioner of Central Excise (Appeals), Aurangabad)

Commissioner of Central Excise, Aurangabad : **Appellant**

VS

Dhoot Compack Ltd. : **Respondent**

Appearance

Shri H.M. Dixit, Asstt.Commr. (A.R.) for Revenue

None for respondent

CORAM:
Hon'ble Shri M.V. Ravindran, Member (Judicial)
Hon'ble Shri C.J. Mathew, Member (Technical)

Date of hearing : 28/12/2017
Date of decision: 28/12/2017

ORDER NO. A/92279-92279 / 2017

Per : M.V. Ravindran

This appeal is filed by the Revenue against Order-in-Appeal No. AV(196)19/2013 dt. 12.07.13 passed by the Commissioner of Central Excise (Appeals), Aurangabad.

2. None appeared for respondent despite notice. On perusal of records, I find that the issue lies in a narrow compass accordingly the appeal is taken up for disposal even in the absence of any representation from the respondent.

3. Heard the Ld. AR and perused the records.

4. The issue that falls for consideration is whether the respondent herein has availed correct cenvat credit of the duty paid by an 100% EOU or otherwise.

5. Ld. AR reiterates the grounds of appeal.

6. It is notice from the records that show cause notice was issued for denial of cenvat credit on the ground that duty is paid by 100% EOU cannot be availed in its entirety. The adjudicating authority after following due process of law, ordered to disallow the credit of Rs.1,19,805/- out of total cenvat credit of Rs.18.92,636/-, ordered interest on the amount confirmed and imposed equivalent amount of penalty of Rs.1,9,805/-.

7. The assessee did not file any appeal before first appellate authority against said order-in-original. Revenue preferred an appeal on the ground that adjudicating authority has erred in allowing cenvat credit of Rs.17,72,831/-. The first appellate authority rejected the appeal and upheld the order-in-original.

8. I find that both the lower authorities have relied upon the judgement of the Tribunal in the case of *M/s. Emcure Pharmaceuticals Ltd. Vs. Commissioner of Central Excise, Pune-I* 2008 (225) ELT 513 (Tri.-Mumbai) to hold in favour of the assessee to allow cenvat credit of Rs.17,72,831/-. There is no dispute as to the fact that this judgment of the Tribunal is on the same subject as is in this appeal and it is on record that judgment of Tribunal in the case of Emcure Pharmaceuticals Ltd. is not appealed against

and is accepted by the Revenue. The only point raised in the grounds of appeal is that Revenue wants to re-argue the matter on the various aspects of the law; even this approach was attempted by the Revenue in the case of *Ahmadabad Packaging Inds. Ltd.* 2009 (247) ELT 172 (Tri.-Ahmd.) in which case the Bench held that such recourse of rearguing the matter does not arise unless the Revenue has preferred an appeal against the decision of Emcure, the first appellate authority has reproduced the observations of the Tribunal in the case of *Ahmedabad Packaging Inds. Ltd.* and following the law laid down by the Tribunal in the case of *M/s. Emcure Pharmaceuticals Ltd. (supra)* and various other decisions on the same issue has rejected the appeal. To my mind the impugned order is correct and legal and does not required any interference.

9. In view of the foregoing, there being concurrent finding of the question of law and fact, the appeal is devoid of merits and is rejected. Cross-objection also stand disposed of.

(Pronounced in court)

(M.V. Ravindran)
Member (Judicial)

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