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

Appeal No. E/86571/2017
E/CO/91121/2017 &
E/86561/2016

(Arising out of Order-in-Appeal No. PK/84/RGD/2017 dt.29.03.2017 & OIA No.CD/227/RGD/2016 dt. 21.3.2016 passed by the Commissioner (Appeals) Central Excise, Mumbai-II)

M/s. Buneesha Chem Pvt. Ltd. : **Appellant**
Bhupender S. Gupta

VS

Commissioner of Central Excise, Raigad : **Respondent**

Appearance

Shri Bhupendra S. Gupta, Director for Appellant

Shri M.K. Mall, Asstt. Commr. (A.R) for respondent

CORAM:

Hon'ble Shri Ramesh Nair, Member (Judicial)

Date of hearing : 15/12/2017
Date of pronouncement: 11/04/2018

ORDER NO.A/85975-85976/2018

The facts of the case are that appellants are engaged in the activity of repacking, labelling/re-labelling of 'Solvent C-9' falling under Chapter Sub Heading 2707 9900 and were paying excise duty on such re-packing activities by availing Cenvat credit facility. The show cause notice dated 7-2-2015 was issued demanding amount of Rs. 2,98,450/- in terms of Section 6(3)(i) of Cenvat Credit Rules, 2004 on the ground that activity undertaken by the appellant is not amount to manufacture and it is more of trading activity, trading activity is treated as exempted service, therefore appellant is required to pay the amount of Rs. 2,98,450/. Demand was confirmed vide Order-in-Original dated 8-10-2015 and appeal filed by the appellant against the said order was rejected by the Commissioner(Appeals) vide order-in-Appeal dated 1-4-2016, against the said order, appellant filed appeal which is rejected as E/86561/16-MUM. In an another proceeding the additional Commissioner issued show cause notice dated 6-8-2014 seeking to recover the Cenvat credit of Rs. 24,17,100/- alleging it as wrongly availed on the basis of audit objection. The said show cause notice was adjudicated vide Order-in-Original dated 14-8-2015 by the Additional Commissioner, Raigad Commissionerate in favour of the appellant holding that activities of re-packing, re-labelling of 'Solvent C-9' (Chapter Sub Heading 2707 9900) do not amount to manufacture, however he quashed the demand of Rs. 24,17,100/- towards Cenvat credit on the ground that duty was paid at the time of clearance on the value addition of repacking goods, the credit availed stands reversed while utilizing the same for payment of duty. It was further observed by the Additional Commissioner that appellant cannot be asked once again to reverse the credit so availed. Consequent to the order-in-original dated 14-8-2015, appellant filed refund claim for an amount of Rs. 28,90,439/-(31,88,889/- paid on clearance of the repacked goods Rs. 2,98,450/- ordered for recovery) under Rule 6(3)(i) of Cenvat Credit Rules, 2004 on the clearance of the same re-packed goods. The adjudicating authority rejected the refund claim by interpreting the order of the Additional Commissioner that the demand of Cenvat credit is not sustainable for the reason that appellant have cleared the re-packed goods on payment of duty thus Cenvat credit availed stood reversed. Against the said rejection order dated 23-8-2016 appellant filed the appeal before the Commissioner (Appeals) who vide order-in-appeal dated 29-3-2017 rejected the appeal and upheld the Order-in-Original dated 23-8-2016. Being aggrieved by the order-in-appeal dated 29-3-2017 appellant filed present appeal which is registered as Appeal No. E/86571/17-MUM. With reference to this appeal, Revenue filed cross objection bearing No. E/CO/91121/17.

2. Shri. Bhupendra Gupta, Ld. Director of the appellant company appeared and reiterates the grounds of appeal and also submitted brief submissions before this Tribunal.

3. On the other hand, Shri M.K.Mall, Ld. Asstt. Commissioner (A.R.) appearing on behalf of the Revenue, in respect of Appeal No. E/86561/16-MUM reiterates the impugned order. As regard the Appeal No. E/86571/17-MUM he reiterates the ground of cross objection.

4. Heard both sides and perused the records.

5. As regard the Appeal No. E/86561/16 –MUM, I find that the demand was confirmed invoking Rule 6(3)(i) Cenvat Credit Rules, 2004 on the ground that appellant's activity of repacking and re-labeling does not amount to manufacture therefore activity amount to trading only, consequently, trading activity being exempted service, it attracts the payment under Rule 6(3)(i), I find that it is undisputed fact that appellant even though the activity does not amount to manufacture but cleared re-packed goods on payment of duty, which is more than the amount payable under Rule 6(3(i), once the goods have been cleared on payment of duty Rule 6(3)(i) cannot be applied, therefore I hold that demand under Rule 6(3)(i) is not sustainable, accordingly impugned order No. CD/ 227/ RGD/ 2016 dated 1-4-2016 is set aside.

6. As regard the Appeal No. E/86571/-MUM, I find that the issue involved in the present case is claim of refund made by the appellant on the ground that once it was held by the Revenue that activity of repacking and re-labelling does not amount to manufacture, all the duty paid on such repacked goods become refundable. In this regard I find that Additional Commissioner while disposing of show cause notice proposing denial of Cenvat credit clearly held that demand is not sustainable on the ground that appellant have cleared the repacked goods on payment of duty. In these circumstances, when the appellant have availed the Cenvat credit and paid excise duty even though the activity does not amount to manufacture, amount of excise duty paid by them

cannot be refundable. I also refer to the Rule 16 of Central Excise Rules, 2016 which reads as under:

> *"Rule 16 of Central Excise Rules 2002*
>
> *(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2002 and utilise this credit according to the said rules.*
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> *(2 If the process to which the goodsare subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (2) of section 3 or section 4 or section 4A of the Act, as the case may be.*
>
> *[Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.]*
>
> *(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Commissioner."*

From the above Rule 16, it can be seen that the assessee is entitle for the Cenvat credit on the duty paid goods received in the factory even though said duty paid goods does not undergo the activity of manufacture and assessee discharges the excise duty on re-issue of unmanufactured goods. In fact, the appellant's activity of taking Cenvat credit on the duty paid goods received in the factory and re-issue of the said goods after re-packing and re-labelling on payment of duty is squarely covered under the provision of Rule 16 of Central Excise Rules, 2002. Therefore there is no question of any refund of any amount paid while clearing re-packed goods, accordingly, I am of the considered view that appellant is not entitle for the refund claimed by them, hence Order-in-Appeal No. PK/84/RGD/2017 dated 29-3-2017 is upheld. In the result:

(a) Appeal No. E/86561/16-MUM is allowed.

(b) Appeal No. E/86571/17-MUM is dismissed, CO stands disposed of accordingly.

(Pronounced in court on 11/04/2018)

(Ramesh Nair)
Member (Judicial)

SM.