IN THE CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI

Appeal No. E/87573/2016

(Arising out Order-in- Appeal No. PK/76/RGD/2016 dated 27/10/2016 passed by the Commissioner (Appeals) Mumbai - II

M/s. Deepak Nitrite Ltd. **Appellant**

Vs.

Commissioner of Central Excise, **Respondent**

Raigad

Appearance:

Shri R.C. Saxena, Advocate for the appellant
Shri S.J. Sahu, Asstt. Commr. (AR) for the respondent

CORAM:

Hon'ble Dr. Suvendu Kumar Pati, Member (Judicial)

Date of hearing : 02.07.2018

Date of decision : 27.07.2018

O R D E R No**: A/86992 / 2018**

Appellant preferred this appeal against the order of Commissioner (Appeals) Central Excise , Mumbai – II confirming the order in original passed by the Superintendent (Tech-IV) of Central Excise, Mahad Division by which CENVAT Credit on goods namely PTFE, Corrugate Hose Pipe, Anyhydrous Therminol – 55, Fuel Pil, Additives, Well Glass fitting, Steam Joining sheet, Vee Belt, Epoxy Primer, Gland Packing Jointing Sheet etc. availed by the Appellant as capital goods used for manufacture of final product namely organic chemicals falling under Chapter 29 of CETA, 1985 was refused and duty of Rs.46,607/- for the availment period between July 2014 and May 2015 along with interest and penalty was imposed. The appeal was registered but it was dismissed under Section 35 B on the ground that value of duty was less than Rs.2,00,000/-. However, the same got ultimately admitted on the strength of decision passed by the Hon'ble High Court, Mumbai in MK Trading Company case reported in 2018-TIOL-176-HC-MUM-CX.

2. Learned Counsel for the appellant, during the course of hearing of the appeal, submitted order copy of earlier decision of this Tribunal passed on 22.07.2017 in favour of the appellant holding such availment of CENVAT Credit as proper since the goods of the category of spares/parts/accessories used for maintenance of capital goods were used for manufacturing activities by the appellant. All goods referred in the said judgement are same as goods under dispute in the present appeal and the only issue that can be found is in respect of period of availment of CENVAT Credit for the period between August, 2013 and June, 2014 in the earlier judgement of this Tribunal while the present case is concerned with the period between May 2014 and May 2015. He pressed to hold the order to have attained finality in view of non-filing of any appeal against such order.

3. Learned AR for the department tried to take this Court to the definition of capital goods and wanted to established the appropriateness of orders passed by the Appellant Authority and Commissioner (Appeals) but in the above referred judgement, with much detail, finding has been given as to why those goods are treated as capital goods and accepted the appellant's contention regarding the use of such capital goods in its manufacturing unit.

4. Going by the judicial precedent I am of the considered view that the issue has been set at rest and that needs no further adjudication by the Tribunal. Hence the appeal filed by appellant company M/s. Deepak Nitrite Ltd. is allowed and appellant is eligible for the credit and therefore demand is not sustainable. The order of Commissioner (Appeals) confirming the order of first adjudicating Authority is hereby set aside.

(Pronounced in Court on 27.07.2018)

Dr. Suvendu Kumar Pati
Member (Judicial)

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