IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
WEST ZONAL BENCH AT MUMBAI
COURT NO.2

APPEAL No.E/1408/2010

(Arising out of Order-in-Appeal No.SB(59)/59/MV/2010 dated 28/05/2010 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

Zinta Food & Beverages : **Appellant**

VS

Commissioner of Excise, Mumbai-V : **Respondent**

Appearance

Shri Mohit Rawal, CA for Appellant
Shri.D.S. Chauhan, Supdt. (AR) for respondent

CORAM:

Hon'ble Mrs.Archana Wadhwa, Member (Judicial)
Hon'ble Shri Sanjiv Srivastava, Member (Technical)

Date of hearing : 12/10/2018
Date of decision : 12/10/2018

ORDER NO.87795/2018

Per : Mrs.Archana Wadhwa

1. After hearing both sides, we find that the appellant is engaged in the manufacture of packaged drinking water falling under Chapter 22 of Central Excise Tariff Act, 1985. They were manufacturing the said final products under their own brand name as also under the brand name of another person. They were availing the benefit of SSI exemption Notification No.8/2003-CE dated 01/03/2003 in respect of their own branded goods, whereas duty was being paid on the branded goods being manufactured by them.

2. During the period May 2008 to August 2008, they availed the credit of Rs.24,805/- in respect of service tax paid by them on the service of testing of water/repairs and maintenance of plant and machinery and utilize the same for payment of duty on clearance of branded goods of other person. Revenue by entertaining a view that inasmuch as the appellant had availed the said service tax credit, they are not entitled to the benefit of SSI exemption notification in respect of their own branded goods. Accordingly, proceedings were initiated by way of issuance of show-cause notice dated 29/09/2008 for denial of SSI exemption notification for the period May 2008 to August 2008, on the ground that the availment of credit of service tax has resulted into ineligibility of SSI exemption notification claim.

3. During the course of adjudication, the appellant though took a stand that notification in question does not debar the availment of Cenvat Credit of service tax for utilization for payment of duty on branded goods and relied upon the Tribunal decision in the case of *Vallabh Vidyanagar Concrete Factory Vs. CCE & C, Vadodara reported in 2010 (18) STR 271 (Tri-Ahmd),* also pleaded that in any case and any view of the matter they had reversed the said Cenvat Credit. In view of the reversal of the credit, it has to be held as if no credit was availed by them. However, the lower authorities did not find favour with the above contention of the assessee and confirmed the demand of duty of excise to the tune of Rs.3,58,256/- along with confirmation of interest and imposition of penalty of identical amount.

4. On appeal, the Commissioner (Appeals) observed that remedial action adopted by the appellant to pay back the Cenvat Credit amount with interest will not cover up the contravention already taken. As such, he confirmed the order passed by the original adjudicating authority. Hence, the present appeal.

5. We find that the fact of the reversal of Cenvat Credit along with interest is not disputed by the authorities below. However, they have not extended the benefit to the appellant on the sole ground that such subsequent reversal is not sufficient and the SSI exemption has to be denied.

However, we find that the issue is no more *res integra* and stands settled by the various decisions. One such reference can be made to Hon'ble Allahabad High Court decision in the case of *Hello Minerals Water (P) Ltd. Vs. UOI reported in 2004 (174) ELT 422 (All.)* Dealing with an identical situation, the Hon'ble High Court observed that reversal of Modvat Credit amounts to non-taking of credit and as such, the benefit of exemption notification cannot be denied on the ground that such reversal was done at the Tribunal stage. To the same effect, one the Hon'ble Gujarat High Court decision in the case of *CCE Vs. Ashima Dyecot Ltd., reported in 2008 (232) ELT 580 (Guj)* as confirmed by the Hon'ble Supreme Court decision in the case of *CCE Vs. Precot Meridian Ltd., reported in 2015 (325) ELT 234 (SC)*.

6. Inasmuch as the issue stands decided in favour of the appellants, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced and dictated in Court)

(Sanjiv Srivastava) **(Archana Wadhwa*)***
Member (Technical) ***Member (Judicial)***

PJ