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

APPEAL No. E/504/2011

(Arising out of Order-in-Appeal No. M-I/AV/348/2010 dated 18.11.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I)

Detco Textiles Pvt. Ltd. **Appellant**

Vs.

Commissioner of Central Excise, Thane-II **Respondent**

Appearance:

Shri Mohit Raval, C.A., for appellant
Shri Anil Choudhary, Assistant Commissioner (AR), for respondent

CORAM:

Hon'ble Dr. D.M. Misra, Member (Judicial)

Date of Hearing: 31.01.2019
Date of Decision: 31.01.2019

ORDER No. A/85244/2019

Heard both sides.

2. This is an appeal filed against order-in-appeal No. M-I/AV/348/2010 dated 18.11.2010 passed by Commissioner of Central Excise (Appeals), Mumbai-I.

3. Briefly stated the facts of the case are that the appellant had availed deemed credit on the invoices issued by M/s. Shree Laxmi Textiles, M/s. S.P. Cotton Mills and M/s. Hindustan Cotton Mills during August

2004 to September 2004. Alleging that on deletion of Rule 12B of the Central Excise Rules, 2002, the supplier of the inputs lost the status of deemed manufacturer and accordingly, the credit availed by the appellant being inadmissible proposed to be recovered. Consequently, demand notice was issued to them on 22.7.2005 for recovery of the credit of Rs.11,27,299/- with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, the appellant filed appeal before the learned Commissioner (Appeals) who, in turn, rejected their appeal. Hence the present appeal.

4. Learned Chartered Accountant, Shri Mohit Raval, for the appellant, submits that admissibility of credit in similar circumstances has been decided by this Tribunal in the case of *Maharashtra Dyeing & Printing Works vs. CCE, Mumbai – 2011 (271) ELT 558 (Tri.-Mumbai)*.

5. Learned AR for the Revenue does not dispute the said fact.

6. I find that in relation to the same supplier of inputs, this Tribunal considering the circumstances and Board circular, observed as follows:-

*"**4.** The issue involved in this case is regarding the wrong availment of Cenvat Credit by the appellant on invoice issued by the Shree Laxmi Textiles, S.P. Cotton Mills and M/s. Hindustan Cotton Mills. The appellants herein availed Cenvat Credit of duty paid as indicated on the invoice by these three firms, the invoices were dated 11-8-2004, 12-8-2004, 18-8-2004. The case of the Revenue is that the traders who had issued invoices have lost their status as manufacturer, subsequent to the deletion of Rule 12B of Central Excise Rules, 2002, with effect from 9-7-2004, as person, who can issue the invoice and discharge duty liability.*

***4.** We find that the CBE &C Circular No. 345/2/2004-TRU dated 28-7-2004 have categorically clarified as under :-*

> *"…………..Hence, from the above it is clear that even after the omission of Rule 12B of Central Excise Rules, 2002, the firm can clear goods lying with them under an invoice after paying Central Excise Duty as per law".*

***5.** It can be seen from the above reproduced portion of the Board Circular that the trader can discharge the duty liability on the goods, which were received by him prior to 9-7-2004. It is not clear in this case whether such goods, duty was paid on the goods invoiced to appellant, on which credit was availed were in fact received by the trader prior to 9-7-2004. If the trader issues an invoice of 18-8-2004, it has to be presumed that the Excise registration certificate issued to him was valid. If that be so, the issue needs to be considered from this angle also. In the absence of any findings on these points, we set aside both the orders of lower authorities and remand the matter back to the adjudicating authority to re-consider the issue afresh after following the principles of natural justice. We allow the appeal by way of remand."*

7. I find no reason to deviate from the aforesaid precedent. Consequently, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Pronounced in court)

(Dr. D.M. Misra)
Member (Judicial)

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