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

Appeal No. E/113/11

(Arising out of Order-in-AppealNo.SB(119)119/MV/2010 dated 19.10.2010 passed by Commissioner of Central Excise (Appeals), Mumbai)

Pam Pharmaceuticals & Allied Machinery Co. Pvt. Ltd. **Appellant**

Vs.

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

Appearance:

Smt.Lalita Phadke, Advocate for appellant
Shri N.N. Prabhudesai, (AR) for respondent

CORAM:

Hon'ble Mr. S.K. Mohanty, Member (Judicial)

Date of Hearing&Decision: 11.10.2018

FINAL ORDER NO. **A/88485 / 2018**

Per: S.K. Mohanty

This appeal is directed against the impugned order dated 19.10.2010 passed by the learned Commissioner (Appeals), Central Excise, Mumbai.

2. Brief facts of the case are that the appellant is engaged in the manufacture of excisable goods viz., pharmaceutical machineries and spare parts thereof, classified under Tariff Entry No. 84 of the first schedule to the Central Excise Tariff Act, 1985. The appellant avails CENVAT Credit of Central Excise

duty paid on the inputs, used in, or in relation to manufacture of the said final products. During the disputed period, the appellant had received the duty paid excisable goods, which were removed initially from the factory premises on payment of Central Excise duty under nine numbers of invoices, issued between the period 16.03.2006 and 31.10.2006. Those duty paid goods were received back under the provisions of Rule 16 of the Central Excise Rules, 2002 for carrying out the process of repair/reconditioning etc. Such activities were undertaken in the factory premises between the period 29.12.2006 and 20.03.2007. After completion of the process envisaged under Rule 16 *ibid*, the duty paid excisable goods were cleared by the appellant on payment of appropriate Central Excise duty. While receiving the duty paid goods in the factory, the appellant did not avail the CENVAT Credit of the duty amount indicated in the invoices immediately and had availed such credit after a lapse of 1½ years from the date of receipt of duty paid goods in the factory. Taking of belated credit was disputed by the department on the ground that as per the requirement of Rule 4 (1) of Cenvat Credit Rules, 2004 read with Rule 16 of the Central Excise Rules, 2002, the credit was required to be taken immediately on receipt of the duty paid goods in the factory. Accordingly, after issuance of show cause notice, the matter was adjudicated against the appellant, in denying the CENVAT Credit availed on the returned goods.

3. Learned Advocate appearing for the appellant submits that the department has not disputed the fact regarding receipt of duty paid goods in the factory, their undergoing further process of repair/reconditioning etc., and subsequent removal of the goods from the factory on payment of appropriate duty. Thus, she submits that since the appellant had received the duty paid goods, as per the requirement of the Cenvat statute, it was

permitted to avail CENVAT credit of Central Excise duty paid on such goods. She also stated the reason for non-availment of cenvat credit immediately on receipt of the goods in the factory. She has relied upon the decisions of this Tribunal in the case of *Steel Authority of India v Commissioner of Central Excise - 2013 (287) ELT 321 (Tri. Del) and SGS India Pvt. Ltd. v. Commissioner of Central Excise 2011 (270) ELT 115 (Tri.Mum)*,to state that such delayed availment of credit is in conformity with the Cenvat statute. Further, she has also referred to the CBEC's Excise Manual of Supplementary Instructions 2005, to submit that if the credit is taken subsequently at a later date, the same cannot be denied.

4. On the other hand, learned A.R. appearing for Revenue reiterates the finding recorded in the impugned order. He also relied on the judgment dated 23.01.2007 delivered by the Hon'ble Supreme Court in the case of Rosali V vs. Taico Bank and Ors in Civil Appeal No. 6129 of 2000 and the judgment of the Hon'ble Madhya Pradesh High Court in the case of Gangavishan Heeralal v. Gopal Digambar Jain and Ors - AIR 1980 MP 119, to state that since the statute used the word "immediately", the said phrase has to be strictly interpreted for the purpose of availing the credit on receipt of duty paid goods in the factory. Thus, he submits that since there is inordinate delay in availing the credit by the appellant, denial of benefit of such credit by the department is proper and justified.

5. Heard both sides and perused the records.

6. Rule 16 of the Central Excise Rules, 2002 permits a manufacturer to take CENVAT Credit of Central Excise duty paid on the goods, which are received in the factory for the purpose of remade, refined, reconditioning or for any other reason.

Further, Rule 4 of the Cenvat Credit Rules, 2004 provides that the CENVAT Credit in respect of inputs may be taken immediately on receipt of the inputs in the factory by the manufacturer. In this case, the fact is not in dispute that the duty paid goods initially removed from the factory were received back for the purpose of carrying out some process and after completion of such process/activities; the same were removed from the factory on payment of Central Excise duty. Thus, under the provisions of Rule 16 of the Rules, the appellant was entitled to take CENVAT Credit of Central Excise duty paid on excisable goods, which were subsequently returned back to the factory. The department has not objected to the fact of availment of credit by the appellant. The only objection raised by the department is that the credit has not been availed immediately on receipt of the duty paid goods, accompanied with the invoices. So far as Rule 4 *ibid* is concerned, the requirement is that “credit on the inputs may be taken immediately”. Since the legislatures have used the word 'may' for interpretation of the statute, it cannot be construed differently to mean that the said phrase has to be strictly interpreted. In other words, the authorities conferred with the power to interpret the statutory provisions, should harmoniously read the contents of the statute for the purpose of proper appreciation regarding the reason of availment of belated credit and on satisfaction, liberal view should be taken in extending such benefit. Interpreting the provisions of Rule 4 *ibid*, the CBEC in the Excise Manual of Supplementary Instructions, 2005 has clarified that if the manufacturer does not take credit as soon as the goods are received in the factory, he would not be denied the benefit of such credit. Further, this Tribunal in the case of *SGS India Pvt. Ltd* (supra) has also held that since there is no time limit prescribed for availment of the credit, the same cannot be denied on the ground that the credit was availed at a later date and not immediately on receipt of the goods. The judgment relied on by the learned A.R. for Revenue is distinguishable from the facts of the present case inasmuch as the issue for decision before the Hon'ble Court was in context with interpretation of the “Order XXI of Rule 84 (1) of the Criminal Procedure Code". On perusal of the relied upon judgments, I find that the phrase “shall pay immediately” contained in the Criminal Procedure Code was interpreted, conveying the true scope and purport that the said statutory provisions should be strictly adhered to for the purpose of compliance. Whereas, contrary is the situation in the case in hand, inasmuch as the Cenvat statute requires that the credit may be taken immediately. Thus, on examination of the provisions between the C.P.C. vis-à-vis, Cenvat statute, it transpires that the later provisions were designed in such manner that the authorities should take liberal view in extending the benefit of credit, appreciating the overall facts and circumstances of the case and the statutory provisions cannot be strictly applied for denying the benefit of legitimate claim of the Cenvat amount. I also find that due to reasonable cause, the appellant did not avail the credit immediately on receipt of the goods, for which the substantive right conferred in the Cenvat statute cannot be denied.

7. In view of the foregoing discussions, I do not find any merits in the impugned order. Accordingly, after setting aside the same, the appeal is allowed in favour of the appellant.

(Order dictated in Court)

(S.K. Mohanty)
Member (Judicial)

NSK