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

Appeal No. E/89150/2013

(Arising out of Order-in-Appeal No. Pune-CX-002-APP-068-13-14 dated 23.07.2013 passed by Commissioner of Central Excise (Appeals), Pune I)

Fluid Line **Appellant**

Vs.

Commissioner of Central Excise, Kolhapur **Respondent**

Appearance:

Shri J.N. Somaiya, Advocate for appellant
Shri M.R. Melvin, Supdt. (AR) for respondent

CORAM:

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

Date of Hearing & Decision : 08.10.2018

FINAL ORDER NO. **A/88496 / 2018**

Per: S.K. Mohanty

Brief facts of the case are that the appellant is engaged interalia, in the manufacture of motor vehicle parts, falling under Chapter 87 of the CETA, 1985. The appellant avails CENVAT Credit of Central Excise duty paid on inputs and capital goods. During the disputed period, the appellant had availed CENVAT Credit on the capital goods received in its factory. Due to paucity of space in the factory premises, the appellant had stored the capital goods in the adjacent place, located within the precinct of the factory. The appellant had reversed CENVAT Credit taken on such capital goods. Thereafter, the appellant availed fresh credit in respect of Central Excise duty paid on the invoices. Taking of fresh credit was disputed by the department. The show-cause notice issued in this regard alleged that the adjacent place where the capital goods were kept / installed was not registered with the Central Excise department and that availment of credit on the basis of Journal Voucher was not a prescribed document in terms of Rule 9 of the Cenvat Credit Rules, 2004. The matter was adjudicated against the appellant on the basis of proposition made in the show-cause notice. On appeal, the learned Commissioner (Appeals) vide impugned order dated 23.07.2013 has held that for taking of CENVAT Credit on capital goods, the registration of factory is not a condition precedent inasmuch as Rule 6 of the Central Excise Rules, 2002 provides for registration of persons and not the factory. Since the appellant being a manufacturing unit, had registered with the Central Excise department, in respect of the main factory including the precinct thereof, he has held that denial of CENVAT benefit on the ground of non-registration of such adjacent place cannot be sustained. However, the learned Commissioner (Appeals) has upheld confirmation of the adjudged demand on the ground that Journal Voucher is not a prescribed document for availment of CENVAT Credit and the appellant should have filed refund application prescribed under Section 11B of the Central Excise Act, 1944 for refund of amount of duty reversed from its CENVAT account. Feeling aggrieved with the impugned order, the appellant has filed this appeal before this Tribunal.

2. Learned Advocate appearing for the appellant submits that the department has not disputed the fact regarding duty paid character of the capital goods and their receipt and use by the appellant for the intended purpose of manufacturing of excisable goods. He further submits that the adjacent place was subsequently incorporated in the registration certificate by the

department, considering such place as a part of the registered factory premises.

3. Per contra, the learned AR appearing for Revenue reiterated the findings recorded in the impugned order.

4. With regard to availment of CENVAT Credit, the Cenvat statute mandates that the credit should be availed on the basis of the documents prescribed under Rule 9 of the Rules. In this case, since the appellant had taken the credit based on the duty paid invoice issued by the manufacturer of the capital goods, it cannot be said that the appellant had availed credit on the basis of Journal entries made in its books. Since at the time of taking of fresh credit, the appellant was in possession of the prescribed duty paid documents, the allegation of the department that credit may not be possible, cannot stand for judicial scrutiny. Furthermore, the department has not specifically alleged that the goods in question had not suffered payment of duty or not received in the factory premises for carrying out the intended purpose. Thus, taking of credit afresh subsequently can be considered as a procedural lapse or irregularity, for which substantive benefit of Cenvat credit cannot be denied.

5. Therefore, 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)

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