CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 88046 of 2018

(Arising out of Order-in-Appeal No. SM/CGST & CX/Bhiwandi/88/17-18 dated 13.04.2018 passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi.)

M/s Chemipol ....Appellant
16-17 Sidhivinayak Industrial Estate,
College Road Vadkun, Dahanu Palghar,
Maharashtra

VERSUS

Commissioner of CGST, Palghar ....Respondent
Utpad Shulk Bhawan, 5th Floor,
Bandra Kurla Complex, Bandra East,
Mumbai – 400 051

APPERANCE:

Shri R.V. Shetty, Advocate for the Appellant
Shri Anil Choudhary, Dy. Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. A/86779/2019

Date of Hearing: 24.06.2019
Date of Decision: 04.10.2019

Denial of CENVAT credit on bought out items exported under bond by the adjudicating authority that was confirmed by the Commissioner (Appeals) is impugned in this appeal.

2. Case of the appellant in brief is that it is registered with Central Excise and exported chemical falling under Chapter 28 of the Central Excise Tariff Act, 1985 on 23.05.2014. It had availed CENVAT credit of Rs. 1,22,055/- against export of bought out items Nubifer under bond without payment of duty after re-packing and relabeling but the credit was denied to it as the goods did not fall under the category of inputs as defined under Rule 2K of the Central Excise Rules, 2004 for which show-cause notice was issued to it, matter was adjudicated upon by the Assistant Commissioner, Boisar-II who confirmed the duty demand along with interest and equivalent penalty. The Commissioner (Appeals) upheld the Order-in-Original in the appeal filed by the appellant before it. Appellant challenged the legality of the said order before this forum.

3. In the memo of appeal and during course of hearing of the appeal, learned Counsel for the appellant Shri R.V. Shetty submitted that export made by the appellant was not disputed by the respondent-department but it was denied CENVAT credit on the ground that no manufacturing activity was involved since appellant failed to provide documentary proof to that effect and for export under bond, where no duty was paid, CENVAT credit was inadmissible. He argued that such order passed by the Commissioner (Appeals) is irregular in view of Rule 16 of the Central Excise Rules read with Board Circular No. 283/117/96-CX dated 31.12.1996 since goods on which duty had been paid at the time of removal thereof brought to a factory for any reason shall make the

assessee eligible for availment of CENVAT credit if such goods are received as inputs as per Rule 16 and CBEC Circular No. 283/117/96-CX dated 31.12.1996 clarified that inputs are exported as such, CENVAT credit is also available to the assessee. Placing reliance on the decision of CESTAT, Principal Bench, New Delhi in the case of *S. Kumar Nationwide Ltd. Vs. Commissioner of Central Excise, Indore reported in 2014 (312) ELT 725 (Tri.-Del.)*, he also argued that finished goods bought to factory and exported on payment of duty, without undertaking any process, also eligible for credit and CBEC Circular No. 283/117/96-CX has clarified that export of inputs without payment of duty but under bond were treated as final products by virtue of "deemed manufacture" clause under Sub Rule 12 of Rule 57F(1)(ii) which covered all such cases within the ambit of proviso to Rule 57F(4) of the Central Excise Rules since export under "claim of rebate' and 'export under bond' should be at parity as intention of both the procedures are to make duty incidence 'nil'. In drawing attention of this Bench to Form ARE1 dated 23.05.2014 and 26.10.2014 *vis-a-vis* to the invoice copy of purchase bill to justify bulk purchase and re-packing of the same into 25 Kg. packets, learned Counsel for the appellant pointed out that such labelling/re-labelling of containers or re-packing from bulk pack to retail pack amounts to manufacture as per Chapter 28 Note No. 9 for which appellant is entitled to CENVAT credit and therefore the order passed by the Commissioner (Appeals) is required to be set aside.

4. In response to such submissions, learned Authorised Representative for the respondent-department Shri Anil Choudhary, Deputy Commissioner has argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and drawn our attention to para 8 of the order passed by the Commissioner (Appeals) wherein he said that the appellant failed to produce documentary evidence to establish that the exported goods (bought out items) were exported after re-packing and not the bought out items had been exported as such for which interference by the Tribunal in the order passed by the Commissioner (Appeals) is uncalled for.

5. Perused the case record, the written note of submissions filed by the appellant and the relied upon judgement. Admittedly there is no dispute concerning export of the products since CT 1 copy was submitted within 24 hours of such export and proof of export was received from the Merchant exporter by the Range Officer. In his order, learned Commissioner (Appeals) had rejected the appeal primarily on the ground that appellant was unable to establish cogently that the bought out items which were exported had undergone any manufacturing process at their end. Second ground of rejection of the claim of the appellant by the Commissioner (Appeals) was that CBEC Circular No. 283/117/96-CX dated 31.12.1996 pertain to inputs cleared as such and had no bearing in this case as in the present case, the issue was of clearance of finished goods as such. Last reason cited by him to reject the appeal

is that comparison of export documents as well as purchase invoices of bought out items did not indicate any re-packing having taken place on the bought out items. However, owing by the CBEC Circular No. 283/117/96-CX dated 31.12.1996 read with Rule 16, it cannot be said that manufacturing has to be established to avail credits on export of bought out items, since Rule 16 permits removal of goods for “any reason” apart from re-making, refining or re-conditioning and CBEC Circular No. 283/117/96-CX dated 31.12.1996 clarified that if inputs exported as such, on that also CENVAT credit is available to the assessee. Further it has also been clarified that MODVAT credit in RG23A Part-II account against the export of inputs as such under bond can be utilised in the same manner as it is provided for a final product under proviso to Rule 57F(4). This being the spirit of the law, there was no requirement on the part of the appellant to establish that the bought out items were subjected to manufacturing process. Further the learned Commissioner (Appeals) had relied upon CBEC Circular No. 283/117/96-CX dated 31.12.1996 that provides that inputs cleared as such cannot be equated with clearance of finished goods as such which is erroneous interpretation for the reason that CENVAT credit are available in respect of inputs cleared as such and also in respect of final products. Moreover, appellant had demonstratively established through the invoices copy and export documents that purchase was made in bulk but exported in small packets of 25 Kg. each. Be that as it may, Rule 16 of Central Excise Rules also permits removal of goods for any other reason on which duty has been paid at the time of removal but for export since such removal is permissible under bond, appellant is entitled to avail CENVAT credit on the duty paid on such inputs. Hence, in carrying forward the judicial precedent set by the Tribunal in *S. Kumar Nationwide Ltd. (supra),* the following order is passed.

6. The appeal is allowed and the order passed by the Commissioner of CGST & Central Excise (Appeals), Bhiwandi vide Order-in-Appeal No. SM/CGST & CX/Bhiwandi/88/17-18 dated 13.04.2018 is hereby set aside.

(Order pronounced in the open court on 04.10.2019)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad