CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 450 OF 2012

[Arising out of Order-in-Original No: 17/CEX/COMMR/KOP/2011 dated 29th November 2011 passed by the Commissioner of Central Excise & Service Tax, Kolhapur.]

Commissioner of Central Excise
Vasant Plaza, 4th & 5th Floor, CS No. 1079/2 KH
Rajaram Road, Bagal Chowk, Kolhapur – 416 001 … ***Appellant***

versus

Raymond Ltd (JK Files & Tools Division)
C-1/1 MIDC Ganekhadpoli, Taluka Chiplun
Dist: Ratnagiri - 415722 ***…Respondent***

APPEARANCE:

Shri KN Aherwal, Commissioner (AR) for the appellant

Shri Archit Agarwal, Chartered Accountant for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE DR SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO: A/85860 / 2020

DATE OF HEARING: 10/01/2020
DATE OF DECISION: 10/01/2020

PER: C J MATHEW

This appeal of Revenue lies against order-in-original no. 17/CEX/COMMR/KOP/2011 dated 29th November 2011 of Commissioner of Central Excise & Service Tax, Kolhapur which dropped proceedings initiated for recovery of ₹ 78,10,904 alleged to have been wrongly availed as CENVAT credit between January 2005 and October 2007. The establishment of the respondent, M/s Raymond Ltd, at Ganekhadpoli had been receiving materials issued by the unit at Thane who were alleged to have ceased to be manufacturer as, since 2005, the processing was restricted to annealing which did not amount to manufacture.

2. The impugned order, holding that there was no dispute on discharge of duty liability by the Thane unit or about receipt of materials at the Ganekhadpoli unit, held in favour of the assessee leading to scrutiny of the said order for legality and propriety by the competent authority under section 35E of Central Excise Act, 1994 leading to the proceedings before us.

3. We have heard Learned Authorised Representative who made elaborate submissions in support of the grounds of appeal. We have heard Learned Chartered Accountant appearing for the respondent.

4. As pointed out by Learned Chartered Accountant, the issue of entitlement to avail credit by the recipient of material on which liability to duty has been discharged by the supplier, despite non-leviability of duty, is now settled by the decision of the Tribunal in *Neuland Laboratories Ltd v. Commissioner of Central Excise, Hyderabad-I [2015 (317) ELT 705 (Tri-Bang)]* which held that

> ‘**7.** *Further, the Board’s Circular No. 940/1/2011-CX, dated 14-1-2011 was also brought to my notice. In this Circular, it has been stated that where an assessee pays Excise duty on exempted goods, the amount recovered as Excise duty has to be deposited with the Central Government and Cenvat credit also needs to be recovered in terms of Rule 14 of the Cenvat Credit Rules, 2004. Rule 14 of the Cenvat Credit Rules, no doubt, provides for recovery of credit taken. The Board assumes that if an assessee takes credit of duty which was not required to be paid but paid, availment of credit would attract the provisions of Rule 14 of the Cenvat Credit Rules. The conclusion is that the credit which was taken wrongly would arise when an assessee is required to determine whether the inputs/capital goods received by him are liable to duty or not and whether duty is payable or not. There is no rule which puts an obligation on the receiver of goods. When we take note of the fact that the assessee may receive inputs/capital goods/services classifiable under almost all the headings, it is difficult to imagine that legislature would require the assessee to determine whether duty is payable for all these items or not and then take credit. Even a jurisdictional Central Excise officer may not have all the items listed in the Schedule for assessment. In fact, assessment has been taken away even from the Central Excise officer. That being the case, the Board’s Circular which has been issued without taking into consideration and considering the implications of the provisions and implications of the instructions on the assessees cannot be applied blindly to arrive at a conclusion against the assessee.’*

5. This order of the Tribunal has been upheld by the Hon’ble High Court of Andhra Pradesh. Furthermore, in *Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) ELT 203 (Bom)]*,

the Hon’ble High Court of Bombay has held that

> *‘10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) ELT 586 (T), Super Forgings - 2007 (217) ELT 559 (T), SAIL - 2007 (220) ELT 520 (T) = 2009 (15) STR 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) ELT 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) ELT 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) ELT A121] by dismissing the SLP filed by the Revenue.’*

6. The direction by the competent authority to file appeal against the impugned order was issued before these judgements were handed down. In the circumstances, the grounds of appeal postulated by appellant-Commissioner herein are no longer arguable.

7. Accordingly, the appeal of Revenue is dismissed.

(Pronounced in open court)

(Dr. Suvendu Kumar Pati)	**(C J Mathew)**
Member (Judicial)	***Member (Technical)***

**/as*