CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 563 OF 2012

[Arising out of Order-in-Appeal No: YDB/02/Th-I/2012 dated 16th January 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – I.]

Molychem
B-9 Kharvai, MIDC, Badlapur, Dist: Thane – 421 503 … ***Appellant***

versus

Commissioner of Central Excise
Thane – I
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (West), Mumbai - 400028 …***Respondent***

APPEARANCE:

Shri Sanjay Dwivedi, Advocate for the appellant

Shri N N Prabhudesai, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A / 87299 /2021

DATE OF HEARING: 22/10/2021
DATE OF DECISION: 22/10/2021

In this appeal of M/s Molychem against denial of CENVAT credit of ₹1,24,975/- for the period from 2008 to 2010, availed on 'inputs' procured by them for activities that were held to not amount to manufacture, order-in-appeal no. YDB/02/Th-I/2012 dated 16th January 2012 of Commissioner of Central Excise (Appeals), Mumbai Zone – I is contested on the grounds that the final product, held to be ineligible as 'output', had been cleared on payment of duty, that rule 16 of Central Excise Rules, 2002 itself envisages availment of CENVAT credit in such situations and that, as the duty liability discharged was much higher than the credit availed, there could be no allegation of intent to evade duty warranting invoking of the extended period.

2. According to Learned Counsel, the appellant is in the business of chemicals that, and by re-packing/re-labelling or some minor process, are deemed to have been 'manufactured' as per the relevant notes of the relevant chapter in the Schedule to the Central Excise Tariff Act, 1985. He submits that, with duty liability having been discharged on final products, it is not open to central excise authorities to now disclaim eligibility to CENVAT credit. He drew attention to the provisions of Central Excise Rules, 1944 which permits any goods, previously removed on payment of duty, to be eligible for CENVAT credit when taken to any other factory for any reason whatsoever and that, if the process so undertaken does not amount to manufacture, the manufacturer is liable pay amount equal to the CENVAT credit so taken. According to him, the decision of the Tribunal, in *J D Industries (India) Limited v. Commissioner of Central Excise, Alwar, [final order no. 50361/2020 dated 18th February 2020 in excise appeal no. 52229 of 2019]* laying down that

> *'4. The fact that although this MS pipe (Black) is not input for the appellant on which they have taken cenvat credit (without*

> *any process) has been cleared on payment of duty. Therefore, in the light of the decision of the Hon'ble High Court in the case of CCE, PuneIII vs. Ajinkya Enterprises -2013 (294) ELT 203 (Bom) wherein it has been held that if the activity does not amount to manufacture and goods have been cleared on payment of dutyl, the same shall amount to reversal taken of cenvat credit on the said goods, therefore, I hold that as the appellant has paid the duty which shall amount to reversal of cenvat credit demanded by the Revenue in the impugned matter.'*

is in their favour.

3. Learned Authorized Representative reiterates the findings of the lower authorities that it is essential for goods to be manufactured to be eligible for availment of credit of duties discharged on procurement of inputs for that purpose and that the appellant is not an assessee for the purpose of manufacture of the impugned goods.

4. In the light of the decision in *re J D Industries (India) Limited,* which has followed the decision of the Hon'ble High Court of Bombay in *Commissioner of Central Excise, Pune – III v. Ajinkya Enterprises [2013 (294) ELT 203 (Bom)]*, the denial of CENVAT credit is not in accordance with law. Consequently, the impugned order is set aside and appeal allowed.

(Operative part of the order Pronounced in Open Court on 22nd October 2021)

(C J MATHEW)
Member (Technical)

**/as*