CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 88128 of 2013

(Arising out of Order-in-Original No. Belapur/02/Taloja/R-V/COMMR/ KA/2013-14 dated 30.04.2023 passed by the Commissioner, Central Excise, Belapur.)

Commissioner of CGST and Central Excise, Belapur .... **Appellant**
1st Floor, C.G.O. Complex,
CBD Belapur, Navi Mumbai- 400 614.

Versus

Asahi (I) Glass Ltd. .... **Respondent**
Plot No. T-7 & 36, MIDC, Taloja,
Taluka- Panvel, District- Raigad- 410 208.

Appearance:

Shri P.K. Acharya, Authorized Representative for the Revenue

Shri Prashant Patankar, Consultant a/w Shri Ajinkya Vaishampayam, Chartered Accountant for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. M.M. PARTHIBAN, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85507/2024

Date of Hearing: 16.05.2024

Date of Decision: 16.05.2024

Per: S.K. MOHANTY

Brief facts of the case are that the respondent herein had obtained Advance License/Authorization for procuring the raw material namely L.S.H.S., without payment of Central Excise duty. They got the invalidation letter from the Office of the Joint DGFT in favour of BPCL to procure the goods from the indigenous manufacturers. On the basis of the said invalidation letter, M/s BPCL though was eligible to clear the goods without payment of duty, but opted to clear the goods on payment of duty and accordingly, paid the duty. Such duty paid by M/s BPCL was availed as Cenvat credit by the respondent. Taking of Cenvat credit was disputed by the Department on the ground that there was no scope for payment of duty under the Advance License/Authorization scheme and since the appellant had availed the Cenvat credit of Central Excise Duty paid by M/s BPCL, the same is recoverable from them. The matter arising out of the show cause notice dated 08.03.2011 was adjudicated vide impugned order dated 30.04.2013, wherein learned Commissioner of Central Excise and Customs, Belapur has dropped the proceedings initiated against the respondent. Feeling aggrieved with the said impugned order, Revenue has preferred the present appeal before the Tribunal.

2. Heard both sides and examined the case records.

3. It is an admitted fact on record that M/s BPCL did not avail the facility provided under the Advance License/Authorization scheme and cleared their finish products on payment of Central Excise duty. The respondent herein, being the recipient of such goods and such goods were used in or in relation to manufacture of final product, they are entitled to take the Cenvat credit of Central Excise duty in terms of Rule 3 read with Rule 9 of the Cenvat Credit Rules, 2004. It is not the case of Revenue that any proceedings were initiated against the supplier M/s BPCL, questioning the reason for the payment of Central Excise duty on the final product manufactured by them. Since, the supplier of goods has not been issued with any show cause notice, the respondent, in the capacity of recipient of such goods, which is used as inputs, cannot be questioned by the central excise authorities, having jurisdiction over the factory of the respondent. We find that the issue arising out of the present dispute is no more open for any debate in view of the judgment of Hon'ble Supreme Court in the case of *Commissioner of Central Excise and Customs Vs MDS Switchgear Ltd.* -2 008 (229) E.L.T. 485 (S.C.).

While endorsing the views expressed by the Tribunal with regard to availment of Cenvat credit by the recipient unit, the Hon'ble Supreme Court has dismissed the appeal filed by the Revenue on the ground that the recipient of inputs cannot be questioned, when the Central Excise duty has been paid by the supplier of the goods.

4. In view of the above, we do not find any infirmity in the impugned order passed by the learned Commissioner of Central Excise and accordingly, dismiss the appeal filed by the Revenue.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

SM