CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 86341 of 2013

(Arising out of Order-in-Original No. 107/NG/COMMR/Th-II/2012 dated 31.12.2012passed by the Commissioner of Central Excise, Thane-II)

M/s Laxmi Industries .... **Appellants**
Survey No. 66, H. No. 2 & 3,
Near Harish Enterprise, Naik Pada,
Valiv, Vasai (East), Dist. Thane

Versus

Commissioner of Central Excise, Thane-II .... Respondent
4th Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai – 400 028

Appearance:

Mrs. Ankita Parekh a/w Mrs. Deepa Shetty, Company Representatives for the Appellants

Shri C.S. Vinod, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/87449/2024

Date of Hearing: 06.12.2024

Date of Decision: 06.12.2024

PER: S.K. MOHANTY

Heard both sides and perused the case records.

2. Briefly stated, the facts of the case are that the appellants herein, are engaged in the manufacture of excisable goods viz., 'M–Seal' and 'Fevi kwik', falling under Chapter Sub-Heading Nos. 3214 1000 and 3506 9999, respectively, of the First Schedule to the Central Excise Tariff Act, 1985. The appellants avail CENVAT Credit of Central Excise duty paid on the

inputs and Service Tax paid on the input services and use those goods/ services in, or in relation to manufacture of the said excisable goods within their factory. During the disputed period, the appellants had undertaken the job-work activity on behalf of M/s Pidilite Industries Ltd. For the purpose of carrying out job-work activity by the appellants, the principal-manufacturer M/s Pidilite Industries Ltd., had imported adhesive and resins and supplied the same to the appellants directly from the Port of import. The said principal-manufacturer had supplied the copy of Bills of Entry alongwith declaration that the adhesives and resins were directly consigned to the appellants from the port of import, for carrying out the job-work activity. However, since there was no correlation between the Bills of Entry *vis-à-vis* the declaration with regard to the goods actually consigned to the appellants, the Department had raised an objection through their Audit Wing. Upon verification of the records, the Audit Wing of the Department vide report dated 17.11.2009 had submitted the summary of their observation, which is extracted herein below: -

"Summary of major audit objections

Sr. No.	*Gist of objection*	*Revenue implication, if any (Rs.)*	*Assessee agreement Yes/No, if no reasons for disagreement*	*Department's conclusions with reasons (as per the Monitoring Cell Meeting held on (29.9.2009)*
1	*Cenvat Credit availed on Bill of Entry in the name of other manufacturer and address*	*Rs. 39,98,312/- + 12,99,872/- + 79,966/- + 9,982/- with interest*	*No. Contended that M/s Pidilite Ltd for whom they do job work are supplying Raw Material from Customs Bonded warehouse with due endorsement by M/s Pidilite and relied upon Circular 179/13/96-CX dt 29.2.96*	*Para accepted, Divisional DC/AC have been directed to verify whether double credit on the said bill of entry has been availed or not and submit his report in the next board meeting."*

3. We find that on the basis of the Audit Report dated 17.11.2009, the jurisdictional Deputy Commissioner of Central Excise, Vasai Division vide his letter dated 10.08.0211, had replied to the Audit Wing of the Department that the appellant-assessee had fulfilled the requisite conditions for availing the CENVAT Credit and that no objections were raised by the Department on the above facts. It has further been stated in the said letter that there is no twice availment of CENVAT Credit on the same Bill of Entry as per the Chartered Accountant's certificate produced by the appellants. Further, the office of the Authorized Representative of

this Tribunal had also communicated with the jurisdictional authorities at the appellants' end for verifying availment of the double CENVAT credit. Pursuant to such query, the jurisdictional Divisional authority at the appellant's end had confirmed that no such record is available with them for verification, as to whether, the goods as per the Bills of Entry were actually consigned to the appellants for carrying out the job-work activity.

4. When the matter was called out for hearing, Mrs. Ankita Parekh, Company Representative for the appellants submitted that subsequent to passing of the adjudication order, the appellants had obtained a revised declaration from the principal-manufacturer M/s Pidilite Industries Ltd., by containing the reference of various Bills of Entry, under which the goods were consigned to the appellants for carrying out the job-work activity. She also submitted a certificate dated 20.09.2024 of M/s Khanna and Panchmia, practicing Chartered Accountants, certifying the duty paid character of the goods, the reference of the Bills of Entry and subsequent consignment of the goods to the appellants' factory for carrying out the job-work activities. Further, we also find that the said Chartered Accountant's firm in their certificate dated 20.09.2024 have also verified the RG-23 Part-II register maintained by M/s Pidilite Industries Ltd., and confirmed the fact that upon receipt of the goods from the port of import, as per the Bills of Entry, the principal-manufacturer M/s Pidilite Industries Ltd. had not availed any CENVAT Credit of the additional duty of customs (CVD) paid on the imported goods.

5. From the available records, it transpires that the requirements of Rule 3 of the CENVAT Credit Rules, 2004 have been duly complied with by the appellants, inasmuch as the imported goods as per the Bills of Entry were received by them for carrying out the job-work activities within their factory premises, and that the principal-manufacturer M/s Pidilite Industries Ltd. had not taken any CENVAT Credit of the CVD amount paid on such importation of the goods. Since, the documents available in the case file demonstrate that the appellants, as recipient of the goods for carrying out the job work activity, has taken CENVAT credit of the CVD amount paid thereon, in our considered view, they should be eligible for availment of CENVAT credit in view of the statutory provisions contained in the Rules of 2004.

6. In view of the above discussions, we do not find any merits in the impugned order, insofar as it has denied the CENVAT benefit to the appellants, by holding that they have not complied with the requirement of CENVAT statute for availment of such credit. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Dictated and pronounced in open court)

(S.K. MOHANTY)
MEMBER (JUDICIAL)

(M.M. PARTHIBAN)
MEMBER (TECHNICAL)

Sinha