CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85269 of 2024
In
Excise Appeal No. 86811 of 2015

(Arising out of Order-in-Appeal No. CD/449/M-III/2015 dated 12.05.2015 passed by the Commissioner of Central Excise (Appeals) Mumbai.)

Softsule Pvt. Ltd. **.... Appellant**
Plot No.86-A, LBS Marg,
Mulund (West), Mumbai- 400 080.

Versus

Commissioner of Central Excise, Mumbai-III **.... Respondent**
Vardan Trade Centre, 3rd Floor,
Wagle Industrial Estate, Thane- 400 605.

APPEARANCE:

Ms Payal Nahar, Advocate for the Appellant

Shri Xavier P.M. Mascarenhas, 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/87451/2024

Date of Hearing: 09.12.2024

Date of Decision: 09.12.2024

Per: S.K. MOHANTY

Revenue has filed this miscellaneous application, seeking change of name and address of the respondent. The prayer made by the Revenue is considered and accordingly, Registry is directed to incorporate the following changed name and address of the respondent in the appeal records for the purpose of disposal of the appeal:

> "*Commissioner of Central Goods Service Tax & Central Excise, Navi Mumbai Commissionerate,*
> *16th Floor, Satra Plaza, Sector –19D, Palm Beach Road,*
> *Vashi, Navi Mumbai – 400 705*".

2. Heard both sides and perused the case records.

3. This appeal is directed against the impugned order dated 03.07.2015 passed by the learned Commissioner of Central Excise (Appeals), Mumbai-II. In the impugned order, the learned first appellate authority has upheld the original order dated 05.03.2014, wherein the learned Dy. Commissioner of Central Excise, Mumbai-II had denied the CENVAT Credit to the appellants. The reason for denial of the CENVAT benefit was that the appellants had availed such benefit in respect of the goods viz. 'catch covers', which were used for clearing physician samples and not used as input for manufacture of the final products. The department had also contended that the value of catch covers was not included in the assessable value for the purpose of determining the duty liability thereon.

4. Insofar as taking of CENVAT Credit by a manufacturer of final product is concerned, Rule 3 of the CENVAT Credit Rules, 2004 has mandated that a manufacturer is entitled to take CENVAT Credit of various duties paid on the inputs, which are received and used in the factory of manufacture of the final product. In the case in hand, the department had not specifically alleged that catch cover was not received by the appellants for the intended purpose and duty on such goods had not been paid by the supplier/manufacturer. Since, on the basis of the valid duty paid documents, the disputed goods were received in the factory of the appellants for use in the intended purpose, the department cannot take the stand that such credit shall not be available inasmuch as value of such material has not been included, while arriving at the assessable value of the final product manufactured. Therefore, we are of the view that in the absence of contravention of the provisions contained in CENVAT statute, denial of the CENVAT benefit on the inputs i.e., catch covers cannot be sustained.

5. We find that this demand is of recurring in nature, inasmuch as the department had raised the identical issue for the period November 2001 to January 2008 and the appeal against the adjudication order was decided by the Tribunal vide Final Order No. A/88078/17/SMB dated 16.06.2017 in favour of the appellants. The relevant paragraph of the said Order is extracted herein below:

> *"5. As regards the denial of Cenvat Credit for the period 2001-2008, I find that the reason for denial of credit is that*

the cost of the catch cover is not included in the value of the final products, i.e. physician samples. On careful reading of the Cenvat Credit Rules, I find that there is no condition for allowing the credit that cost of input or packing material should be included in the value of the final products. The only condition is that input should be used in the manufacture of the final products and such final products should be cleared on payment of duty. Thereafter, it is not provided in the law whether the cost of particular input or packing material is included in the value of the final products or otherwise. It is also observed that before 01/04/2000, there was a condition of allowing credit on packing material that cost of the packing material should be included in the value of the finished goods. However, from 01/04/2000 this condition was removed. This also establish that the condition of inclusion of cost of packing material in the final product in order to allow the credit is not required. I am therefore of the considered view that the reason given by the Revenue for denial of credit is not supported by any legal provision. Therefore, the impugned order is set aside and the appeal is allowed."

Further, for the period 2009 to 2011, identical view was also taken by the Tribunal vide Final Order No. A/87156-87157/2019 dated 29.07.2019. The dispute involved in the present appeal is from January 2012 to September 2012. Since, the issue has already been decided by the Tribunal vide the earlier orders (referred supra), we cannot take a contrary stand at this juncture, in deciding the present appeal differently.

6. Therefore, we do not find any merits in the impugned order passed by the learned Commissioner (Appeals). Accordingly, by setting aside the impugned order, 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)

SM