

M/S. Nectar Life Sciences Ltd. Vs. C.C.E., Chandigarh-ii

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Principal Bench New Delhi

Decided On : Jan-31-2014

Judge : The Honourable Mrs. Archana Wadhwa, Member (Judicial)

Appeal No. : Appeal Nos. E/2442 & 2443 of 2011 -EX[SM] [Arising Out of Order-in-Appeal No.85-86/CE/APPL/CHD.II of 2011, dated 14.07.2011 passed by C.C.E.(Appeals), Chandigarh-II]

Appellant : M/S. Nectar Life Sciences Ltd.

Respondent : C.C.E., Chandigarh-ii

Judgement :

Archana Wadhwa, J.

1. Both the appeals are being disposed of by a common order. In Appeal No.2442, duty of Rs.8,00,032/- stands confirmed and in Appeal No.2443, duty of Rs.3,26,904/- stands confirmed by denying the benefit of CENVAT credit on two grounds. First, that the credit is not available in respect of various steel items used as structurals and second on the ground that invoices on the basis of which CENVAT credit stands availed, were in the name of other units i.e., Unit No.1 was taking credit in the name of Unit No.2 and vice versa.

2. At this stage, Ld. Advocate for the appellants fairly agrees that the issue of availment of CENVAT credit on supporting structurals stands decided against

them by the Larger Bench of the Tribunal in the case of Vandana Global. However, he draws my attention to their reply filed before the lower authorities contesting that the various iron and steel items were used in the manufacture of solvent _____ plant and as such even in terms of the declaration of law by the Larger Bench, they are admissible Cenvatable inputs. Though the said plea was taken note of by the Commissioner, who has also relied upon the appellants jurisdictional officers range report laying down that the said items were used for fabrication of sheds and ducts of the air handling unit of bulk drug plant but he has denied the credit on the simple observation that the same were used in other production areas of the plant for fabricating the structure for supporting machinery.

3. In as much as, I find that there is no conclusive finding as to whether that the said items were used as supporting structurals or fabrication of other capital goods installed in the factory, I deem it fit to set aside the impugned order and remand the matter to the original adjudicating authority for factual verification. The appellants are at liberty to place on record evidences in support of their contention that the various iron and steel items were used for fabrication of capital goods.

4. As regards the second issue, the Revenues only objection is that the credit was availed by one unit whereas the invoices were in the address of the other unit. The appellants have taken a categorical stand at the time of filing the reply to the Show Cause Notice that both the units located in Derbas and are belonging to the same appellants and as the suppliers are common, there may be some change in the address. It is seen that the Commissioner (Appeals) has observed that in terms of Rule 9(2) of CENVAT Credit Rules, 2004, procedural violations should not bar the manufacturer from availing CENVAT credit but the appellants were required to follow the procedural envisage under the said proviso which requires filing of an application to the jurisdictional Dy/Asst. Commissioner for necessary rectification along with the documentary evidences. As such, it is seen that the only objection of the Revenue is that the separate application has not been filed though the said plea stands taken by the appellants before the original adjudicating authority at the time of filing the reply to the Show Cause Notice.

5. In view of the above, I deem it fit that the necessary verifications as regards receipt of capital goods be made and if the same stand received by the appellants credit be allowed without taking any technical objections.

6. Accordingly, the impugned orders are set aside and both the appeals are allowed with the consequential relief to the appellants.

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