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Commissioner of Central Excise Vs. Esdee Paints Ltd.

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Jun-16-2006

Judge : T Anjaneyulu

Appellant : Commissioner of Central Excise

Respondent : Esdee Paints Ltd.

Judgement :
2. The revenue is in appeal. The issue involved in this appeal is that the denial of the Modvat credit to the appellants on the inputs supplied by the Registered Dealers which is not purchased from the importer / manufacturer. The brief facts of the case are that the respondents-M/s. Esdee Paints Ltd., are engaged in the manufacture of paints and varnishes falling under Chapter 32 of the Central Excise Tariff Act, 1985 and availing the cenvat credit facility. The appellants have taken the cenvat credit of Rs. 87,656/- on the basis of documents issued by M/s. Bayer Polychem (I) Ltd. Thane from its godown at Thane. It was informed by the jurisdictional Range Officer of the supplier M/s. Bayer Polychem (I) Ltd., Thane mat the dealer of M/s.

Bayer Polychem (I) Ltd. had wrongly passed on cenvat credit vide above referred invoices. Therefore, the above said invoices on which the appellants availed aforesaid credit have been called for verification which revealed that M/s. Bayer Polychem (I) Ltd., Thane have issued the aforesaid invoices for the goods imported by M/s. Bayer (India) Ltd., since Rule 8 of Cenvat Credit Rules, 2002 provides for transfer of cenvat credit on account of change in ownership or sale, merger, amalgamation, lease or transfer of factory to a joint venture with the specific provisions for transfer of liabilities of such factory to manufacturer not dealer, thus there was no provisions for allowing cenvat credit lying unutilized in the account of M/s. Bayer (India) Ltd., Thane at the time of taking over the business of M/s. Bayer (India) Ltd., Thane by M/s. Bayer Polychem (I) Ltd., Therefore, it is held that the invoices issued by the M/s. Bayer Polychem (I) Ltd., were invalid documents. Therefore, they were issued a Show-Cause-Notice dt.

12.10.2004 proposing recovery of cenvat credit cf Rs. 87,656/- under Rule 12 of Cenvat Credit Rules, 2002 read with Section 11A of the Central Excise Act, 1944 along with interest under Section 11AB of the Act and penal action under Rule 13 of CCR, 2002 read with Rule 25 of the Central Excise Rules, 2002 and Section 11AC of the Act. It was adjudicated by the Assistant Commissioner, C.E. Divn.-IV, Ahmedabad-II, wherein the demand was confirmed along with interest and imposition of penalty of Rs. 25,000/- on the ground that the provisions of transfer of cenvat credit on account of change in ownership or sale, merger, amalgamation, lease or transfer of factory to a joint venture with the specific provisions for transfer of liabilities of such factory laid down under Rule 8 of CCR, 2002 are applicable to the manufacturer of final product only and the said rule is silent regarding the case of dealers. On filing appeal, the Commr.(A), Central Excise, Ahmedabad set aside the Order-in-Original and allowed cenvat credit.

3. The ld. counsel for the respondents relied upon the case law of Larsen and Toubro Ltd. v. CC&CE, Nagpur . It is held that Modvat not to be denied for the mistake of seller of goods namely Indian Oil Corpn.Ltd. - Modvat credit to be granted to assessee- Rule 57Q of Central Excise Rules, 1944. Further, he relied upon the case of Vimal Enterprise v. UOI . On the similar proportions, further he has raised the following contentions: i) The impugned Order-in-Appeal passed by the Learned Commissioner (Appeals) is a well- reasoned order passed after due consideration of the material facts and the point of law and should not be disturbed.

ii) The appellants have availed Cenvat credit on the impugned goods based on the said documents after duly following the required procedure as contemplated under

Cenvat credit rules.

iii) The appellants wish to submit that at no point of time the receipt of the inputs in the factory or its utilization in or in relation to manufacture of finished products have been disputed by the department.

Lastly, he relied upon the Board Circular No. 766/82/2003-CX dated 15.12.2003. Clause 5 of the Circular reads as follows: On the issue of availment of credit by the user-manufacturer, it is clarified that action against the consignee to reverse/recover the CENVAT credit availed of in such cases need not be resorted to as long as the bonafide nature of the consignee's transaction is not dispute.

4. The contention of the ld. DR "Cenvat credit is not applicable of these invoices which do not conform to the provisions of Rule 2(f) of Cenvat Credit Rules, 2002.

5. In the present case, there is no dispute about bonafide transactions for purchase of the goods, on payment of due consideration, receipt of the same in the factory of the appellants and their use in the manufacture of final product. The impugned order passed by the learned Commissioner is well reasoned and considered one. There appears me nothing whatsoever material to interfere with the impugned order. Thus, I am of the opinion that the appeal filed by revenue lacks merits. In the result, the appeal is dismissed.

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