

Sperry Plast Ltd. Vs. C.C.E., Noida

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Jul-18-2012

Judge : Ajit Bharihoke, President & Rakesh Kumar, Technical Member

Appeal No. : STAY APPLICATION NO.3355 OF 2011 IN CENTRAL EXCISE APPEAL NO.2574 OF 2011

Appellant : Sperry Plast Ltd.

Respondent : C.C.E., Noida

Advocate for Pet/Ap. : For the Appellant: Surender Gupta, Advocates. For the Respondent: R.K. Verma, A.R.

Judgement :

Order

Per Mr. Justice Ajit Bharihoke (oral):

1. Appellant is engaged in the manufacture of Thermoplast Rubber Compound Polyamides, HIPS etc. which are subject to excise duty. The appellant has three manufacturing units located at 1121, M.I.E. , Bahadurgarh, Haryana; Lane No.5, EPIP Kartholi, SIDCO Industrial Complex, Bari Brahmana Industrial Complex, J and K and D-29, 30, 31-SIPCOT Footwear Components Park, Irungattukottai, Sriperumbudur. The appellant availed cenvat credit on duty paid inputs, capital goods as well as input services. On scrutiny of records of the appellant unit it was

found that the appellant unit had availed cenvat credit of input service amounting to Rs.23,47,826/- during the period July 2006 to February 2008 on the basis of invoices issued in the name of Head Office of the appellant located at Delhi. The Department was of the view that since the invoices were issued in favour of the Head Office of the company the appellant was not entitled to avail cenvat credit in view of Rule 9(1)(g) of Cenvat Credit Rules, 2004 for the reason that the Head Office of the assessee was not registered during relevant time as Input Service Distributor in terms of Rule 3(1) of Service Tax Rules, 2005. Accordingly, a show cause notice raising demand was issued invoking extended period of limitation. Show cause notice was ultimately culminated into disallowance of the cenvat credit and confirmation of the duty demand amounting to Rs.23,47,826/- with interest and equal amount of penalty.

2. Appellant preferred appeal against the order in original. Commissioner(Appeals) vide impugned order in appeal No. 161/CE/Appeal/Noida/2011 dated 25.7.2011 dismissed the appeal and confirmed the order in original.

3. It is against the aforesaid order in appeal the appellant approached the Tribunal. Along with the appeal, the appellant has moved a stay application seeking waiver of condition of pre-deposit of duty demand, interest and penalty.

4. Today the matter was listed for argument on stay application. However, on hearing the parties we are of the view that appeal itself can be disposed of. Accordingly, with the consent of authorized representatives of the parties, the condition of pre-deposit is waived and the arguments on appeal are heard.

5. Shri Surender Gupta, Advocate relying upon the judgment of this Tribunal in the case of Parekh Plast (India) Pvt. Ltd. vs. C.C.E., Vapi vide Final Order No.A/1011/2011-WZB/Ahd in Appeal No.E/1916/2010 dated 15.6.2011 has submitted that the issue is no more res integra for the reason that the Tribunal has settled the issue by holding that denial of credit on sole ground that the invoices were issued in the name of Head Office is not justified inasmuch as the same is curable and procedural defect.

6. Learned Shri R.K.Verma, A.R. for Revenue on the contrary has argued in support of the impugned judgment and submitted that in order to avail cenvat credit on input service the assessee has also to show that the input services were actually availed by him.

7. We have considered the rival submissions and perused the record. On perusal of the order in original as also the impugned order we find that neither the adjudicating authority nor the Appellate authority have undertaken the exercise to scrutinize the invoices relating to Input services availed in order to find out as to whether or not the Input service corresponding to the invoices were availed by the appellant unit or the Head Office or any other unit. In our considered view the aforesaid factual aspect is necessary for just adjudication of the issue involved. Since this aspect has not been looked into by the adjudicating authority we are left no alternative but to set aside the impugned order and remand the matter back to the adjudicating authority for de novo decision after giving an opportunity of being heard to the parties.

8. Appeal as well as stay application are disposed of in above terms.

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