

Cipla Ltd. Vs. Commissioner of Central Excise, Mumbai-iii

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Mumbai

Decided On : Oct-11-2010

Judge : The Honourable Mr. P.G. Chacko, Member (Judicial) & the Honourable Mr. M. Veeraiyan, Member (Technical)

Appeal No. : APPLICATION No. E/S/658/09 in APPEAL No. E/423/09

Appellant : Cipla Ltd.

Respondent : Commissioner of Central Excise, Mumbai-iii

Advocate for Pet/Ap. : Shri Bharat Raichandani, Advocate, for assessee. Shri W.L. Hangshing, Authorised Representative (JCDR), for Commissioner.

Judgement :

P.G. Chacko

This application seeks waiver of pre-deposit and stay of recovery in respect of CENVAT credits totalling to over Rs.2.68 crores and penalty amounting to over Rs.1.96 crores. After examining the records and hearing both sides, we are of the view that the appeal itself has to be finally disposed of at this stage. Accordingly, after dispensing with pre-deposit, we take up the appeal.

2. In the impugned order, the learned Commissioner denied CENVAT credit on certain capital goods and on certain input services for the period from April 2004 to December 2007. The said capital goods were installed in the Research and

Development wing of the appellant. The said input services were used in or in relation to the construction of the RandD wing. The learned Commissioner found that the RandD wing was not a part of the registered factory premises and, therefore, he took the view that the appellant was not entitled to CENVAT credit on the capital goods installed in the RandD wing or on the input services availed in or in relation to the construction of that wing. The main challenge in the present appeal is against this decision of the learned Commissioner. The learned counsel for the appellant submits that the relevant show-cause notices have only alleged that the RandD wing was situate away from the factory and had not categorically alleged that it was not within the registered factory premises. It is submitted that the adjudicating authority obtained a verification report from the Assistant Commissioner without notice to the appellant and relied on that report to decide on the CENVAT-credit issue against the appellant. It is submitted that no copy of the said report was supplied to the appellant and, therefore, an effective opportunity of contesting the Revenue's case was denied to them. In other words, according to the learned counsel, natural justice was denied to them. The learned counsel has also invited our attention to certain documents available on record. One of these documents is an application dated 25.4.2006 submitted by the appellant to the Assistant Commissioner for issuance of installation certificate in respect of certain capital goods with accessories, which were imported and installed in the RandD wing. Another document is a certificate of installation dated 5.5.2006 issued by the factory manager in respect of the said capital goods with accessories. Yet another document is an installation report dated 23.3.2006 of M/s. Inkar Instruments Pvt. Ltd. A letter dated 8.5.2006 of the Range Superintendent, addressed to the Assistant Commissioner, recommending issuance of installation certificate to the appellant, is also seen on record. The Assistant Commissioner's certificate of installation of the capital goods in the factory of the appellant is also found on record. On the strength of these documents, the learned counsel has contested the Commissioner's finding that the capital goods were not received in the factory premises. The learned counsel has also invited our attention to a factory plan which appears to have been approved in 1998. This plan also shows the RandD wing seemingly endorsed on a subsequent date. The appellant would rely on these documents to plead that the RandD wing was very much within the

registered factory premises during the material period, during which the capital goods in question were received by them and the input services were availed by them. Nevertheless, we find, the verification report dated 13.1.2009 obtained by the Commissioner from the Assistant Commissioner after concluding the personal hearing in the case on 4.12.2008, without notice to the appellant, raises a question mark. The learned JCDR, who also has been heard by us, has not contested the claim of the appellant that no copy of the verification report was furnished to them before the impugned order was passed.

3. In the aforesaid facts and circumstances, the case has to be remanded for fresh adjudication, as we have found negation of natural justice to the appellant on the part of the Commissioner.

4. As pointed out by the learned JCDR, there is an appeal of the Revenue also against the Commissioner's order, which does not figure in today's cause-list. We have called for those records also and have heard both sides. We note that a crucial finding of the Commissioner has not been challenged by the Revenue and the same reads thus: "The admissibility of CENVAT credit on the capital goods used for research and testing purpose is not disputed. The same is allowed provided it is used in the factory that is registered." The only grievance raised in the Revenue's appeal is that the learned Commissioner confirmed the substantive demand against the assessee under a wrong provision of law. According to the Revenue, the adjudicating authority should have invoked Rule 14 of the CENVAT Credit Rules, 2004 instead of Section 11A of the Central Excise Act/Section 73 of the Finance Act, 1994. We further note that the Revenue, in their appeal, has sought for remand of the case to the adjudicating authority. We are inclined to remand the case accordingly.

5. In the result, we set aside the Commissioner's order and allow both these appeals by way of remand, with a request to the learned Commissioner to pass fresh speaking order after supplying to the assessee a copy of the verification report dated 13.1.2009 and giving them a reasonable opportunity of being heard. The sole grievance raised by the Revenue before us may also be considered by the learned Commissioner. The stay petition is also disposed of.

