CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 87619 OF 2015

[Arising out of Order-in-Appeal No: CD/612/Bel/2015 dated 22nd July 2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone – II.]

Sai Swaroop Enterprises Pvt Ltd
Plot No. R 257, TTC MIDC, Rabale,
Navi Mumbai - 400701 … ***Appellant***

versus

Commissioner of Central Excise
Belapur
CGO Complex, CBD Belapur, Navi Mumbai – 400 614 ***…Respondent***

APPEARANCE:

Shri Mohan V Paranjpe, Consultant for the appellant

Shri PK Acharya, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86057/2025

DATE OF HEARING: 18/06/2025
DATE OF DECISION: 07/07/2025

PER: C J MATHEW

This appeal of M/s Sai Swaroop Enterprises Pvt Ltd is on the limited issue of CENVAT credit having been denied on the ground

that the activity undertaken by the appellant did not amount to 'manufacture' as set out in section 2(f)(ii) of Central Excise Act, 1944. The appellant is a small business that undertakes 're-packing and labelling' for principal manufacturer. They had, accordingly, discharged duty liability at their end while taking credit of taxes/duties paid by them for input goods.

2. In dispute is credit of ₹ 15,87,927, that had been taken during the period from November 2007 to September 2012, and demand thereof confirmed under rule 14 CENVAT Credit Rules, 2014, along with applicable interest, and penalty of like amount imposed under rule 15 of CENVAT Credit Rules, 2004.

3. It is the contention of the Learned Consultant for the appellant that their activity of re-packing of chemicals covered 14 different headings of First Schedule to Customs Tariff Act, 1975 and that, in terms of chapter notes pertaining to nine chapters, such activity was deemed to be manufacture and that in the chapter notes relating to other five chapters there was no such deeming provision. It was submitted that the appellant had, in error, discharged duty liability on all the goods without discrimination and that the issue arose in context of refusal of the central excise authorities to allow retention of the credit solely on the ground that the final products were not liable to duty.

4. We have heard Learned Authorized Representative who has reiterated the findings in the impugned order.

5. It is on record that the appellant is a manufacture of both dutiable and non-dutiable goods and, furthermore, that duty liability arose only from the deeming provision in the relevant notes to the chapter in First Schedule to Customs Tariff Act, 1975. There is no dispute that all the final products had been burdened with duties of central excise. The inappropriateness of denial of CENVAT credit from exemption of final products from duty that, nonetheless, one way or another, discharged duty liability was settled by several decisions of the Tribunal. In *Asian Colour Coated Ispat Ltd v. Commissioner of Central Excise, Delhi – III [2015 (317) ELT 538 (Tri.-Del.)]*, the Tribunal held

> *'37. Moreover, when the Department's case is that the process undertaken by the appellant does not amount to manufacture, it amounts to saying that the appellant have cleared the Cenvat credit availed inputs as such and this is something which is not prohibited, if at the time of removal of Cenvat credit availed inputs, in terms of the provisions of Rule 3(5) of the Cenvat Credit Rules, 2004, an amount equal to the Cenvat credit availed is paid under an invoice issued under Rule 9 of the Central Excise Rules, 2002. There is no dispute that the amount paid by the appellant is more than the Cenvat credit availed. In my view, therefore, the assessee should not be penalized for paying more amount than their actual duty liability. Since Rule 3(5) itself requires that removal of cenvated inputs as such on payment of an amount equal to the Cenvat credit availed has to be under an*

invoice issued under Rule 9 of the Central Excise Rules, 2002 and since in terms of the Rule 9(1) of the Cenvat Credit Rules, 2004, an invoice issued by a manufacturer under Rule 9 even for removal of cenvated inputs/capital goods as such is a valid document for availing Cenvat credit, the appellant's customer could avail Cenvat credit on the basis of the invoices for pickled sheets issued by the appellant and as such, there is no illegality in the appellant's passing on the Cenvat credit. Since the amount paid on the clearance of pickled H.R. sheets is more than the Cenvat credit availed, the Cenvat credit availed stands more than reversed and there is no need to recover the same again. It is also seen that this issue stands decided in favour of the appellant by the Tribunal in the case of Ajinkya Enterprises (supra) and this judgment of the Tribunal has been upheld by the Bombay High Court vide judgment reported in 2013 (294) E.L.T. 203 (Bombay).'

6. In *Commissioner of Central Excise & Customs, Surat – II v. Creative Enterprises [2009 (235) ELT 785 (Guj.)]*, the Hon'ble High Court of Gujarat held

'6. When one goes through the order of the first appellate authority, it is apparent that the respondent has been held to be a manufacturer as defined in Section 2(f) of the Central Excise Act, 1944. The appellate authority has taken into consideration the activities carried on by the respondent-assessee. The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture.'

7. In *A One Laminators Pvt Ltd v. Commissioner of Central Excise [2012 (276) ELT 172 (Del.)]*, it had been held

> *'5. The neat submission made by the learned counsel for the appellant is that if the aforesaid process is not to be treated as manufacturing process and the appellants are not entitled to Cenvat credit on that basis, then the appellants were also not required to pay any excise duty. It is also pointed out that the excise duty paid by the appellants is much more than the Cenvat credit availed by the appellant. It is also pointed out that Cenvat credit was not claimed or paid to the appellant in cash but was utilized in payment of excise duty only. There is adequate force in this submission of the appellants and we are of the view that the CESTAT while passing the impugned order could not have glossed over these glaring facts which would clearly disclose a prima facie case like this and the appellant should not be fastened with any liability of making pre-deposit, as directed.'*

8. Considering the principles set out in decisions cited *supra* as well as several other decisions cited by Learned Consultant which we need not enumerate, discharge of duty liability – whether leviable or not leviable – erases any proceedings for denial of CENVAT credit thereof.

9. In view of the principle, as set out, we find no reason to sustain the impugned order which is set aside to allow the appeal.

(Order pronounced in the open court on 07/07/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*