(2011) 04 KAR CK 0121

In the Karnataka High Court

Case No : CEA. No. 127 of 2009

Commissioner of Central Excise, Bangalore-I Commissionerate, C.R. Building, Queen''s Road, Bangalore - 560001	APPELLANT
Vs	
M/s. Geltec Ltd., (Formerly known as Banner Pharmacapas (India) Pvt Ltd.)	RESPONDENT

Date of Decision : 12-04-2011

Acts Referred:

Central Excise Rules, 1944 — Rule 57D
CENVAT Credit Rules, 2004 — Rule 21, 3, 9

Citation : (2012) 281 ELT 170 : (2012) 28 STR 422

Hon'ble Judges : Ravi Malimath, J;N. Kumar, J

Bench : Division Bench

Advocate : N.R. Bhaskar, for the Appellant; Lakshmi Kumaran and Sridharan, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—The revenue has preferred this appeal challenging the order passed by the Tribunal which has held that the Cenvat credit shall be admissible in respect of the amount of inputs contained in any waste, refuse or bye-product and therefore the assessee is under no obligation to reverse any Cenvat credit on inputs attributable to the waste that is generated in the factory premises during the course of its manufacture.

2. The assessee is engaged in the manufacture of Gelatin Capsules using Gelatin IP., B.P. (Spl for export)

Gelatin Tablet grade, from which Gelatin Mass Waste is a bye product. The assessee had destroyed Gelatin mass waste without reversing the credit availed on the input contained therein during the period August, 2001 to March 2006. The assessee during the relevant period has removed 863488 Kgs of Gelatin mass waste valued at Rs. 14,84,79,560/- without reversing the Cenvat credit availed on the said portion of the inputs which works out to Rs.2,38,32,217/- (Rs.2,37, 56,730/- being the BED and Rs.75,487/- the Education cess). Therefore proceedings were initiated against the assessee for under the provisions of Rule 3 of Cenvat Credit Rules, 2004/2002 and Rule 57AB of the Central Excise Rules, 1944. The appellant contested the proceedings. The adjudicating authority did not accept the stand of the assessee and therefore it held that the assessee obtained Modvat/Cenvat credit irregularly and therefore raised a demand and also directed payment of interest and penalty. Aggrieved by the same, the assessee preferred an appeal to the Tribunal. The Tribunal held that the Cenvat credit shall be admissible in respect of the amount and held that the CBEC Circular dated 3-4-2000 abundantly makes it dear that the CBEC Cenvat credit shall be admissible in respect of the amount of inputs contained in any aforesaid waste, refuse or by-product and therefore they set aside the order of demand and held that there is no liability to pay excise duty on the part of the assessee. Aggrieved by the said order, the present appeal is filed by the Revenue.

3. This appeal is admitted to consider the following substantial questions of law:

a) Whether the impugned order is legally sustainable in holding that Cenvat Credit availed is not required to be reversed on the inputs attributable to Gelatin Mass Waste generated during the course of manufacture of final product especially having availed remission of duty in terms of Rule 21 of the Central Excise Rules ?

b) Whether the order of the Tribunal is legally sustainable in the absence of not assigning any reasons as to why the Gelatin Mass Waste cannot be considered as excisable product leviable to duty ?

c) Whether the order of the CESTAT is legally sustainable in its interpretation of the provision of Section 57D of the Erstwhile Central Excise Rules and the Board Circular No. B/47/2000 dated 03.04.2000 without considering the Board Circular No. 800/33/2004-CX dated 01.10.2004?

The learned counsel for the revenue relied on Rule 3 of Cenvat Credit Rules, 2004 and contended that the assessee was under an obligation to reverse the Cenvat Credit in respect of Gelatin waste as it falls under Rule 3(5). Reliance is placed on Rule 3(5) which reads as under:-

When inputs or capital goods on which CENVAT Credit has been taken, are removed as such from the Factory, or premises of the provider of output service, the manufacturer of the final products or provider of output service, as the case may be, shall pay an amount equal to the credit availed in respect of such inputs or capital goods and such removal shall be made under the cover of an invoice referred to in Rule 9.

Therefore it is clear that when inputs are removed "as such" from the factory or the premises of the factory then the Cenvat credit availed, should either be reversed or duty is paid by raising an independent invoice. In the instant case, it is nobody''s case that the input is removed from the factory premises in the same condition in which it was brought within the factory. The input so used in the manufacturing process and in the course of manufacturing process, this gelatin waste is generated as a bye-product as in the case of finished product. Therefore, the said waste is destroyed. The said destroyed waste is not removed from the factory premises. It was contended that the waste itself is excisable goods and no duty shall be paid thereon. If it is an excisable goods and if it had been removed from the place, the place of removal is outside the factory, then the excise duty is payable.

4. The material on record discloses that it was destroyed within the factory premises and it was not removed. Therefore the liability to pay excise duty on the said mass does not arise. Even if the said waste is excisable and duty is payable, that in no way enables the authorities to insist on reversal of. Cenvat Credit or payment of excise duty. The entire claim is on the assumption that the input which is brought into the factory is now sought to he removed in the same condition. Then only sub-rule(5) of Rule 3 applies. In the instant case, the input is not removed ''as such'' from the factory premises and therefore the said Rule has no application to the facts of this case and therefore there is no liability to pay excise duty on the said gelatin waste. Though gelatin waste is also excisable, when it is destroyed the Commissioner has the power to waive the payment of excise duty payable on such excisable item.

5. In that view of the matter, seen from any angle the order passed by the Tribunal granting the benefit cannot be found fault with. Therefore, we do not see any merit in this appeal and accordingly it is dismissed and the substantial questions of law are answered in favor of the assessee and against the revenue.

