(2015) 10 DEL CK 0241

In the Delhi High Court

Case No : CEAC Nos. 43-44 of 2015

Commr. of C. Ex. & S.T., LTU, New Delhi — APPELLANT

Vs

Havells India Ltd. — RESPONDENT

Date of Decision : 06-10-2015

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35G
Customs Tariff Act, 1975 — Section 3

Citation : (2015) 325 ELT 840

Hon'ble Judges : S. Muralidhar and Vibhu Bakhru, JJ.

Bench : Division Bench

Advocate : Sonia Sharma, Advocate, for the Appellant

Judgement

1. These appeals by the Commissioner of Central Excise & Service Tax under Section 35G of the Central Excise Act, 1944, are directed against the final order dated 16th January, 2015 passed by the Customs, Excise & Service Tax Appellate Tribunal (''CESTAT'') in Appeals Nos. E/571715 and 57178 of 2013. The Respondents are manufacturers of moulded cases circuit breakers (''MCB''), switches, fuses, etc. chargeable to central excise duty. The period of disputes in these appeals before the CESTAT are from 22nd April, 2004 to 29th April, 2005 and 23rd December, 2005 to 7th January, 2006.

2. The Respondents imported raw materials by availing exemption under Notification No. 96/2004, dated 17th September, 2004. The customs duty as well as additional customs duty were paid using Duty Entitlement Pass Book (DEPB) scrips issued in terms of the 2002-07 Foreign Trade Policy (FTP). The Respondents availed of Cenvat credit for the additional customs duty paid through DEPB scrips. In terms of the Notification No. 34/97-Customs, dated 7th April, 1997 goods specified in Schedule I to the Customs Tariff Act, 1975 (CTA) imported would be exempted from payment of the whole of the duty of customs as well as additional duty subject to importer having DEPB with sufficient credit.

3. Notification No. 96/2004 provided that the importer using the DEPB would be

"entitled to drawback or CENVAT credit of additional duty leviable under Section 3 of the CTA against the amount debited in the DEPB issued in terms of Para 4.3 or 7.9 of the FTP 2004-09.

4. The case of the Department was that the Assessee had paid the additional customs duty using the DEPB issued under the FTP of 2002-07 while the benefit of CENVAT credit could be availed in terms of the Notification No. 96/2004 only when the payment of import duty or additional customs duty had been made using the DEPB issued under the FTP of 2004-09.

5. The Division Bench of Punjab and Haryana High Court in its order dated 22nd April, 2010 in CEA No. 37 of 2010 Commissioner of C. Ex. Vs. Neel Kanth Rubber Mills, referred to the EXIM Policy which was amended by the Notifications dated 28th January, 2004 and 17th September, 2004 which entitled an importer to avail Cenvat credit of additional customs duty against the amount debited in the DEPB scrips. It was noted by the High Court that there was no condition in the said notifications that the debits made in the DEPB issued under a particular FTP alone would be eligible for CENVAT credit and that debits in a DEPB issued under a previous FTP would not be eligible for credit.

6. Ms. Sonia Sharma, learned counsel for the Appellant states, on instructions, that to the best of the knowledge of the Appellant, no appeal has been filed as of date against the aforementioned order of the Punjab and Haryana High Court in Commissioner of Central Excise v. M/s. Neel Kanth Rubber Mills (supra) which decides the issue in favour of the Assessee and against the Department.

7. The Court finds that the said decision indeed covers the issue against the Department on all fours. The Appellant has not been to show any notification by which the benefit of CENVAT credit has been expressly denied where the payment of customs duty or additional customs duty is made using DEPB scrips issued in terms of the FTP 2002-07.

8. No substantial question of law arises for consideration by the Court. The appeals are dismissed.