(2023) 12 CESTAT CK 0048

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.41232 Of 2014

M/S. Ajinomoto India Private Limited APPELLANT

Vs

Commissioner Of Central Excise RESPONDENT

Date of Decision : 18-12-2023

Acts Referred:
Cenvat Credit Rules, 2004 — Rule 15(1)
Central Excise Rules, 2002 — Rule 25

Citation : (2023) 12 CESTAT CK 0048

Hon'ble Judges : Sulekha Beevi C.S., Member (J);Vasa Seshagiri Rao, Member (T)

Bench : Division Bench

Advocate : G Vardini Karthik, M. Ambe

Final Decision : Allowed

Judgement

Sulekha Beevi C.S., Member (J)

1. Brief facts are that the appellant is holding Central Excise Registration for the manufacture of Mono-sodium Glutamate (MSG), Ajinomoto, being the brand, falling under Chapter 29 of the Central Excise Tariff Act, 1985. The appellant availed CENVAT Credit on inputs purchased within India on the basis of invoices and also on inputs imported on the basis of Bills-of-Entry. They also availed CENVAT Credit on capital goods. The finished goods, mainly, Mono-sodium Glutamate, are cleared to domestic market on payment of duty. On perusal of records, it was found that the appellant have cleared inputs as such to 100% EOUs under ARES-3s without payment of duty, on the basis of CT-3 certificates.

2. The Department was of the view that in order to be eligible for exemption from payment of duty, when the goods are cleared to 100% EOU, the inputs should be used to manufacture finished goods at the factory of the appellant. The inputs having been cleared as such, the appellant is not eligible for the exemption as per Notification No. 22/2003 dated 31.03.2003.

3. Show Cause Notice dated 20.06.2011 was issued proposing to demand the duty for the period June 2010 to September 2010 on the inputs cleared as such, to 100% EOUs by the appellant.

4. After due process of law, the original authority confirmed the duty demand along with interest and imposed penalty under Rule 15(1) of the CENVAT Credit Rules, 2004 read with Rule 25 of the Central Excise Rules, 2002.

5. On appeal, the Commissioner (Appeals) vide order impugned herein upheld the same. Hence, this appeal.

6.1 On behalf of the appellant, the Ld. Counsel Ms. Vardhini Karthik appeared and argued the matter. It is submitted that the appellant had procured inputs and cleared there goods to the 100% EOU only after re-packing and re-labelling done at their factory; though the authorities below noted that the appellant has carried out activities which amount to manufacture, as defined under Section 2(f) of the Central Excise Act, 1944, the same has not been considered at all.

6.2 It is further submitted that in the appellant?s own case for the period from October 2008 to May 2010, the very same issue came up for consideration before the Commissioner (Appeals). After considering the arguments put forward by the appellant and taking note of the facts, the Commissioner (Appeals) allowed the contentions of the appellant that the activity of repacking and lelabelling amounts to ?manufacture?; the demand was wholly set aside vide Order-in-Appeal No. 10-12/2013 (M-IV) dated 30.01.2013

6.3 It is argued by the Ld. Counsel that the Department, having taken a view that the activity of the appellant in doing re-packing and re-labelling the inputs, amounts to manufacture, ought not to have taken a different view for the disputed period. To support this contention, the Ld. Counsel relied upon the decision in the case of Commissioner of Income Tax, Madurai v. Hi-Tech Arai Ltd. [2014 (368) I.T.R. 577 (Mad.)] It is submitted that the Hon?ble Jurisdictional High Court in the said case observed that the Department while interpreting the very same facts cannot take a different view unless there is change of law or change of facts. The relevant paragraph, as referred to by the Ld. Counsel, reads as under: -

“we find no justifiable reason to differ with the said finding rendered by the Tribunal, more so taking note of the fact that the Department had for the assessment years 1986-1987 to 1994-1995, namely, for a period of nine years, accepted the fact that the payment made towards royalty is revenue expenditure and had not raised dispute thereon. That apart, even for the assessment year 1995-1996, the Assessing Officer has partially treated the payment of royalty as revenue expenditure. The sudden volte-face by the department on this issue appears to be on account of a new interpretation by the subsequent Assessing Officer. At this juncture, we would like to observe that the view of the department, while interpreting the very same agreement, cannot be inconsistent. Unless there is a change in law or on the basis of new and acceptable material which went unnoticed, the opinion should no differ from time to time based on the perception of individual officers. Citizens expect consistency not only in judicial orders, but also in the orders passed by quash-judicial authorities".

6.4 It is submitted that the issue whether appellant is clearing the goods after repacking and re-labelling came up for consideration before the Tribunal and vide Final Order No. 41075 of 2018 dated 03.04.2018 (for the period from February 2008 to October 2008) the Tribunal remanded the matter after taking into consideration the arguments put forward by the appellant that the activity amounted to manufacture and that inputs are not cleared as such to the 100% EOU. In such remand proceedings, on the basis of the facts, the original authority vide Order-in-Original No. 10/2019 dated 29.03.2019 allowed the claim of the appellant to set aside the duty demand, except for an amount of Rs.96,694/-. The said demand was confirmed only for the reason that the appellant therein had failed to bring out documents that the inputs were not cleared as such.

6.5 The Ld. Counsel adverted to paragraphs 10 and 11 of the impugned order to submit that the appellant has re-packed and re-labelled the inputs procured and then cleared to the 100% EOUs. Though the authorities below have noted the same, it is observed that in certain instances, the appellant has cleared ?as such? and therefore has confirmed the entire duty. It is submitted by the Ld. Counsel that the appellant would be able to produce documents to establish the fact that the inputs were re-packed and re-labelled before clearing to the 100% EOUs.

6.6 It is prayed that an opportunity may be given to the appellant to furnish necessary documents in this regard. The Ld. Counsel prayed that the appeal may be allowed.

7. The Ld. Authorized Representative Shri M. Ambe appeared and argued for the Department. Paragraph 10 of the impugned order was adverted to by the Ld. Authorized Representative to submit that the appellant after procuring bulk packs of 25 kilogrammes of monosodium glutamate has cleared these inputs as such to 100% EOUs. The authorities below have rightly concluded that the appellant is liable to pay duty as they are not eligible for the exemption as per Notification No. 22/2003 dated 31.03.2003 from payment of excise duty. It is prayed that the appeal may be dismissed.

8. Heard both sides.

9.1 From the facts narrated above, it is brought out that for the period from October 2008 to May 2010, the Commissioner (Appeals) has allowed the appeal on the very same issue in favour of the appellant holding that the appellant has carried out re-packing and re-labelling of the inputs procured by them indigenously as well as by import.

9.2 For a different period, the Tribunal vide Final Order No. 41075/2018 dated

03.04.2018 had remanded the matter to verify whether any consignment was cleared as such by the appellant.

10. On perusal of the records before us, we do not have sufficient clarity as to whether the procured goods entirely have been re-packed and re-labelled. Needless to say in the said activities are carried out then it amounts to manufacture. The Ld. Counsel has submitted that they would be able to furnish documents to establish their contention with regard to re-packing and re-labelling of the goods. As the issue in the appellant?s own case has been considered favourably by the authorities below for several consignments, we are of the opinion that the matter requires to be remanded to the adjudicating authority who is directed to consider the contention of the appellant that their activity amounts to manufacture and verify the same. The adjudicating authority shall also take note of the discussions made by the Commissioner (Appeals) in Order-in-Appeal 10-12/2013 dated 30.01.2013.

11. In the result, the impugned order is set aside. the appeal is allowed by way of remand.