(2015) 07 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 59703 Of 2013

M/s. Albert David Ltd. APPELLANT

Vs

C.C.E. & S.T. Ghaziabad RESPONDENT

Date of Decision : 29-07-2015

Acts Referred:

Citation : (2015) 07 CESTAT CK 0027

Hon'ble Judges : S.K. Mohanty, J

Bench : Single Bench

Advocate : Devinder Singh

Final Decision : Allowed

Judgement

1. The appellant is engaged in the manufacture of I.V. Fluids, which is exempted from payment of Central Excise duty. One of the raw materials used

in the process is LDPE granules, which is used for manufacture of plastic bottles, in which IV Fluids is packed. The appellant avails cenvat credit in

respect of plastic granules used in the manufacture of waste/scrap of plastic bottles, which are not usable for packing the I.V. Fluids. On removal of

such waste material, the appellant discharges the duty liability. Taking of cenvat credit on the HDPE granules contained in such waste product was

disputed by the Central Excise Department. In the process of adjudication, demand of Rs.1,60,624/- was confirmed alongwith interest and equal

amount of penalty was imposed on the appellant. On appeal, the ld. Commissioner (Appeals) vide the impugned order dated 28.06.2013 has upheld the

adjudged demand. Hence, this present appeal is before the Tribunal.

2. Heard the Ld. Counsel for both the sides.

3. The period of dispute in this case is Februaryâ?? 2011. I find that the issue arising out of the present dispute is no more res integra in view of the

Final Order No. 51539/2015 dated 23.04.2015 passed by this Tribunal in the case of the appellant itself in appeal No. E/2287/2011-EX (DB). The

relevant paragraph in the said order is extracted herein below:-

â??3. Both sides agree that the issue involved in this case stands decided by the judgment of Honâ??ble Allahabad High Court in the

appellants own case reported in 2013 TIOL 621 â?" All. Cx, and this judgment of Honâ??ble Allahabad High Court has been affirmed by

the Honâ??ble Apex Court reported in 2014-TIOL-36-SC-CX. Both sides also agree that relying upon Honâ??ble Allahabad High Court

judgment the Tribunal in the appellantâ??s own case for the previous period has vide final order No.54949/2014 dated 18.12.2014 has set

aside the cenvat credit demand in respect of the LDPE granules which had gone waste in the course of manufacture of plastic bottles for

packing of I.V. Fluids by the appellant. In view of this, the impugned order is set aside. The appeal is allowed.â??

4. In view of the above settled position of law, I do not find any merits in the impugned order. Accordingly, the same is set aside and the appeal is

allowed in favour of the appellant.

(Dictated and pronounced in open court)