**(2021) 07 CESTAT CK 0041**

**In the Customs, Excise And Service Tax Appellate Tribunal**

**Case No :** Excise Miscellaneous Application No. 85062 Of 2021, Excise Appeal No. 637 Of 2012

M/s. Nahar Textiles Pvt. Ltd. APPELLANT

Vs

Commissioner Of Central Excise , Thane-II RESPONDENT

**Date of Decision :** 22-07-2021

**Acts Referred:**

Cenvat Credit Rules, 2004 — Rule 14, 15(2)
Central Excise Act, 1944 — Section 2(f), 3(3), 4, 4A, 11A(2), 11A(1), 11AA, 11AB, 11AC
Central Excise Tariff Act, 1985 — Chapter 54, 55
Central Excise Rules, 2002 — Rule 11, 16

**Citation :** (2021) 07 CESTAT CK 0041

**Hon'ble Judges :** Dr. Suvendu Kumar Pati, J;Sanjiv Srivastava, Technical Member

**Bench :** Division Bench

**Advocate :** Hemant Kapadia, Nitin Ranjan

**Final Decision :** Allowed

## Judgement

1. This appeal is directed against order in original No 34/PKA/COMMR/Th-II/2011 dated 14.12.2021 of the Commissioner Central Excise Thane-II. By the impugned order Commissioner has held as follows:

"Order

1. I disallow the inadmissible CENVAT credit availed and utilised by M/s Nahar Textiles Pvt. Ltd. totally amounting to Rs. 2,61,06,377/- and determine and demand, in terms of Rule 14 of the Cenvat Credit Rules, 2004 read with sub section (2) of Section 11A of the Central Excise Act, 1944 prevalent during the material time (now under sub-section (10) of Section 11A of the Central Excise Act, 1944), the duty of Rs. 2,61,06,377/ (Rupees Two Crore Sixty One Lakh Six Thousand Three Hundred Seventy Seven only) demanded in the show cause notice under the provisions of Rule 14 of CENVAT Credit Rules, 2004 read with

 

Section 11A(1) of the Central Excise Act, 1944 and order for the recovery from M/s. Nahar Textiles Pvt. Ltd. Boisar.

2. I order that appropriate interest, in terms of then Section 11AB of Central Excise Act, 1944, (now Section 11AA of the Central Excise Act, 1944) on the amount determined as payable at Sr. No. 1 above shall be recovered from M/s. Nahar Textiles Pvt. Ltd., Boisar.

3. I impose penalty of Rs. 2,61,06,377/- (Rupees Two Crore Sixty One Lakh Six Thousand Three Hundred Seventy Seven only) on M/s. Nahar Textiles Pvt. Ltd., Boisar under the provisions of Rule 15(2) of CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944."

2.1 Appellant is engaged in the manufacture of fabrics falling under Chapter 54 and 55 of the Central Excise Tariff Act, 1985.

2.2 During audit of the records of the appellants, it was observed that the appellant are procuring different types of yarn, on which they are availing Cenvat credit. The said yarn is used for weaving of Grey Fabrics classifiable under Chapter 54 and 55 of the Central Excise Tariff Act, 1985. The Grey Fabrics are then cleared to different Processing Houses under the cover of Central Excise Invoice issued under Rule 11 of the Central Excise Rules, 2002, on payment of appropriate Central Excise duty under Notification No. 29/2004-CE, dated 09.07.2004.

2.3 After processing, the processed fabrics/ finished fabrics are returned by the Processing Houses in Lumps on payment of appropriate Central Excise duty. Appellant on receipt of such processed/finished fabrics in Lumps, avail Cenvat credit on the same. The processed fabrics is then cut to the desired sizes and packed. The fabrics are finally cleared for exports under Rebate and also in local which ultimately are exported.

2.4 Audit contended that since the cutting and packing of processed fabrics do not amount to manufacture as per Section 2 (f) of the Central Excise Act, 1944, the CENVAT Credit the CENVAT Credit availed by the appellants on the processed fabric received from the processing house is improper and not admissible.

2.5 The Audit also observed that the appellant had received finished fabrics from their Dahanu unit, which they have claimed as goods returned, on which the assessee have availed Cenvat credit. It is seen that the assessee were mentioning the 'Identification mark on their invoices issued from their Tarapur unit while clearing the finished fabrics to their Dahanu unit. However, the invoices issued by the Dahanu unit while returning the impugned finished fabrics do not have any such identification number. Besides, the description of the fabrics mentioned in the invoices issued by the appellant and those issued by the Dahanu unit also do not match. Therefore, the co-relation of the goods dispatched and the goods received back cannot be made. The co-relation of the goods dispatched and the goods received back is relevant as the assessee are operating under Notification No. 29/2004 CE, dated 09.07.2004 as well as Notification No. 30/2004 CE, dated 09.07.2004, i.e. the assessee clear dutiable as well as exempted fabrics. In absence of any correlation and document to establish that these returned goods were duty paid CENVAT Credit availed in respect of these returned goods is improper.

2.6 Therefore investigations were made by the revenue and Show Cause Notice dated 04.02.2011 was issued to appellants to show cause as to why :-

a. the Cenvat credit of Rs. 2,56,90,641/- (Rupees Two Crore fifty six lakh ninety thousand six hundred forty one only) [Basic Rs. 2,50,39,220/- + Education Cess Rs. 5,05,516/- + Sec. H. Education Cess Rs. 1,45,905/] availed on the finished processed fabrics received from the Processing Houses and used in the cutting and packing at the assessee's premises (details as per Annexure 'A' to the Show Cause Notice), should not be disallowed to them and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with the provisions of Section 11A(1) of the Central Excise Act, 1944, by invoking the first proviso thereto;

b. the Cenvat credit of Rs. 4,15,736/- (Rupees Four lakhs fifteen thousand seven hundred thirty six only) [Basic Rs. 4,04,394/- + Education Cess Rs. 8,089/- + Sec. H. Education Cess Rs. 3,253/-) availed on the fabrics received from their Dahanu unit (details as per Annexure 'B' to the Show Cause Notice), should not be disallowed to them and recovered from them under the provisions of Rule 14 of the Cenvat Credit Rules, 2004 read with the provisions of Section 11A(1) of the Central Excise Act, 1944, by invoking the first proviso thereto;

c. interest at appropriate rate, on the amount shown at (a) and (b) above, should not be demanded and recovered from them under the provisions of Rule 14 of Cenvat Credit Rules, 2004, read with the provisions of Section 11AB of the Central Excise Act, 1944; and

d. penalty should not be imposed on them under the provisions of Rule 15 of the Cenvat Credit Rules, 2004, read with the provisions of Section 11AC of the Central Excise Act, 1944.

2.7 The show cause notice was adjudicated by the Commissioner as per the impugned order referred in para 1, supra. Aggrieved by the impugned order appellants have filed this appeal.

3.1 We have heard Shri Hemant Kapadia, Company Secretary for the appellant and Shri Nitin Ranjan, Assistant Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant, learned Company Secretary submits,-

the goods received back from the processing house were their own goods returned after processing. These goods were subjected to further processes such as cutting and packing and thereafter cleared by them on payment of duty for export under claim of rebate. Since the process undertaken by them on their own goods returned from the processing house, were incidental and ancillary to completion of manufacturing process, the processes undertaken will amount to manufacture as per Section 2(f) of the Central Excise Act, 1944.

ØSince duty has been paid by them on clearance of the finished goods the credit taken by them in respect of the goods returned from the processing house cannot be denied as has been held in various decisions specifically that of Hon'ble Gujarat High Court in the case of Creative Enterprises [2009 (235) ELT 785 (GUJ)]. The decision of Gujarat High Court has been affirmed by Hon'ble Supreme Court as reported at [2009 (243) ELT A120 (SC)]

ØRule 16 of the Central Excise Rules, 2002 specifically allows the credit in respect of the goods received by them from processing house on payment of duty.

ØThe entire issue is revenue neutral.

ØIn respect of the non correlation of the defective goods returned from their Dahanu unit, the stand of revenue is self contradictory. In Annexure B attached to the Show Cause Notice revenue itself has established such correlation between the invoice issued by them at the time of clearance of these goods to the Dahanu unit, and invoice issued by the Dahanu Unit returning the defective goods. Since Annexure B clearly shows such co-relation, there is absolutely no justification for denial of this credit.

ØThe demand for CENVAT Credit made by the impugned order cannot be sustained and so the demand for interest and penalties imposed should be set aside.

3.3 Learned Authorized Representative while re-iterating the findings recorded in the impugned order, submits that-

ØThe processes undertaken by the appellant on the returned goods do not amount to manufacture hence the credit availed by them on the returned goods is not admissible.

ØAppellants have not followed the procedure for job work as prescribed, hence they cannot claim the benefit of the same.

ØRule 16 of the Central Excise Rules, 2002 cannot be made applicable to the case of the appellants.

ØIn respect of the defective goods received from their Dahanu unit appellants have not been able to establish the duty paid nature of the returned goods hence the credit taken in respect of these goods is not admissible to them.

ØAppeal needs to be rejected.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of arguments.

 

4.2 Rule 16 of the Central Excise Rules, 2002 read as follows:

Rule 16 Credit of duty on goods brought to the factory -

(1) Where any goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason, the assessee shall state the particulars of such receipt in his records and shall be entitled to take CENVAT credit of the duty paid as if such goods are received as inputs under the CENVAT Credit Rules, 2004 and utilise this credit according to the said rules.

(2) If the process to which the goods are subjected before being removed does not amount to manufacture, the manufacturer shall pay an amount equal to the CENVAT credit taken under sub-rule (1) and in any other case the manufacturer shall pay duty on goods received under sub-rule (1) at the rate applicable on the date of removal and on the value determined under sub-section (3) of section 3 or section 4 or section 4A of the Act, as the case may be.

Explanation. - The amount paid under this sub-rule shall be allowed as CENVAT credit as if it was a duty paid by the manufacturer who removes the goods.

(3) If there is any difficulty in following the provisions of sub-rule (1) and sub-rule (2), the assessee may receive the goods for being re-made, refined, re-conditioned or for any other reason and may remove the goods subsequently subject to such conditions as may be specified by the Principal Commissioner or Commissioner, as the case may be.

4.3 From the plain reading of this rule it is quite evident that this rule applies in case of all goods on which duty had been paid at the time of removal thereof are brought to any factory for being re-made, refined, re-conditioned or for any other reason. Definitely the phrase "for any other reason" is wide enough to cover the activities undertaken by the appellant on the goods received from processing house. Sub-rule (2) deals with the clearance of the goods received in terms of sub-rule (10 and provides for the situation even when these goods are subjected to processes not amounting to manufacture. In case the goods are subjected to processes not amounting to manufacture, the person claiming so will not pay any duty at the time of clearance of these goods but is required to reverse the CENVAT credit taken in terms of sub-rule (1). In the case before us appellant do not claim that processes undertaken by them on these goods received from processing house are incidental and ancillary to the completion of manufacturing process. Hon'ble Apex Court has in case of J G Glass Industries [1998 (97) ELT 5 (SC)] held as follows-

"9. The contention of the assessee is that printing and decorating bottles will not by any stretch of imagination amount to manufacture. It is argued that unless the process brings into existence a different commercial product, it cannot be said to be manufacturing process. In short, the contention is that the plain bottles do not cease to be bottles by some logos or names being printed thereon.

 

Reliance is placed on a judgment of this Court in Union of India v. Delhi Cloth & General Mills - 1977 (1) E.L.T. (J 199) (S.C.) = 1963 Supp. (1) S.C.R. 586. Our attention is drawn to the following passage :-

"On a consideration of all these materials we have no doubt about the correctness of the respondents' case that the raw oil purchased by the respondents for the purpose of manufacture of Vanaspati does not become at any stage "refined oil" as is known to the consumers and the commercial community. The first branch of Mr. Pathak's argument must therefore be rejected.

The other branch of Mr. Pathak's argument is that even if it be held that the respondents do not manufacture "refined oil" as is known to the market they must be held to manufacture some kind of "non-essential vegetable oil" by applying to the raw material purchased by them, the processes of neutralisation by alkali and bleaching by activated earth and/or carbon. According to the learned Counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Vol. 26, from American judgment. The passage runs thus :-

`Manufacture' implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use."

10. In Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. M/s. Pio Food Packers - 1980 (6) E.L.T. 343 (S.C.) = 1980 Supp. Supreme Court Cases 174 this Court observed :-

" ..... There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly manufacture is the end result of one more process through which the original commodity is made to pass. The nature and extent of process may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity".

11. In Rollatainers Ltd. v. Union of India - 1994 (72) E.L.T. 793 (S.C.) the question arose with reference to the applicability of exemption pertaining to products of the printing industry. The Notification specified the goods as "all products of printing industry including newspapers and printed periodicals". The contention of the appellant was that printed cartons are a product of printing industry and as such exempt from duty under the Notification. Rejecting that contention the Court said :-

"According to the appellant-company printed cartons are known and understood in the trade as products of the Printing Industry. The dominant activity in the manufacture of a printed carton is the printing activity and the cutting, creasing and gluing, if any, are only supplementary. It was further contended that the printed cartons have become a medium of advertising the product. It enhances the sale value of the goods. The art is chosen so that the brand name and the trade mark of the manufacturer are highlighted. The appearance and the visual impact of the printing on the carton are of utmost importance and occupy the major time and expense in the manufacture of the carton. It was, therefore, finally contended that the printed cartons are known and understood in the trade as the product of the printing industry. Since that is how the printed cartons are understood in the common parlance, the appellant-company is entitled to the benefit of the Exemption Notification.

..... The literature referred to by the appellant only shows that the printing industry has advanced to such an extent that one can print on almost anything such as glass, metal or synthetic base. Earlier the printing activity was primarily confined to printing of books, literature, newspaper and periodicals etc. The advanced printing industry covers a much wider field of activity than it did in the past. Can we, therefore, say that every material on which printing work is done becomes a product of the Printing Industry? The answer has to be in the negative. An ordinary carton without any printing on it is a completed product and undisputably the product of Packaging Industry. The question for our consideration is, does it cease to be the product of Packaging Industry as and when some printing is done on the said carton? We are of the view that to a common man in the trade and in common parlance a carton remains a carton whether it is a plain carton or a printed carton. The extreme contention that all products, on which some printing is done, are the products of the Printing Industry cannot be accepted. The Division Bench of the High Court has rightly rejected the contention on the following reasoning :-

"In our view, it would be an extreme proposition to hold that all products on which some printing is done is a product of the printing industry. In that event, printed cloth would be a product of the printing industry and not of the textile industry. A metal can with printed material on it will similarly be a product of the printing industry and not of the packaging industry. The same can be said of card-board packet and even wooden boxes over which some printing is done to identify the goods or its manufacturer. In our view, the mere fact that something is printed on a product by itself does not make it a product of the printing industry. A carton is a carton and has only one use, namely of; packing a product to be sold in the market. The mere fact that something is printed on it does not change its essential nature or use. The learned Judge has observed that the end-use of a product is immaterial. In the case of a carton the question does not arise, because it has only one use and therefore any distinction between its intermediate use and end-use is unwarranted. In our view, the printed cartons are designed at times to make the product attractive for the purchaser, and at times to identify the goods and highlight its qualities, and at times to identify the manufacturer of the goods. All the same, the carton remains a carton and is used for the purpose of packaging."

....What is exempt under the Notification is the product of the "Printing Industry". The "Product" in this case is the carton. The Printing Industry by itself cannot bring the carton into existence. Any amount of fancy printing on a card-board would not make it a carton. In the process of manufacturing the printed cartons, the card-board has to be cut, printed, creased and given the shape of a carton by using paste or gum. Simply because there are expensive prints on the carton such a printed carton would not become the product of the Printing Industry. It shall remain the product of the Packaging Industry."

12. The above ruling was followed in Collector of Central Excise, Bombay v. Paper & Products Co. - 1996 (88) E.L.T. 317 (S.C.) in which it was held that unwaxed printed paper cut into sheets and reels according to the needs of the customer for the purpose of being used as wrappers in packaging cannot be said to be a product of printing industry so as to attract the exemption Notification.

13. In Metagraphs Pvt. Ltd. v. Collector of Central Excise, Bombay - 1996 (88) E.L.T. 630 (S.C.) = (1997) 1 S.C.C. 262 the appellant manufactured printed aluminium labels. The labels were printed on flatbed offset printing press and the printing was done on a deep offset printing plate. The labels were meant to be fixed to refrigerators, radios, air-conditioners, telephones etc. The Tribunal held that the printed aluminium labels were not products of printing industry and rejected the claim for exemption. The Division Bench of this Court reversed the decision of the Tribunal and followed the reasoning in Rollatainers Ltd.'s case (supra). After referring to the above case, the Bench said " ... There this Court approved the test based on understanding of trade parlance/common parlance of a particular product. In the case on hand but for the printing, the aluminium label would serve no purpose and as seen above, it is the printing on the aluminium sheet, which communicates the message to the buyer that makes the sheet as a label, unlike a carton printed or plain which always remains a carton. The label announces to the customer that the product is or is not of his choice and his purchase of the commodity would be decided by the printed matter on the label. The printing of the label is not incidental to its use but primarily in the

 

sense that it communicates to the customer about the product and this serves a definite purpose. This Court in Rollatainers case held that "what is exempt under the notification is the product" of the printing industry. The `product' in this case is the carton. The printing industry by itself cannot bring the carton into existence". Let us apply this above formula to the facts of this case. The product in this case is the aluminium printed label. The printing industry has brought the label into existence. That being the position and further the test of trade having understood this label as the product of printing industry, there is no difficulty in holding that the label in question are the products of printing industry. It is true that all products on which some printing is done, are not the products of printing industry. It depends upon the nature of products and other circumstances. Therefore the issue has to be decided with reference to facts of each case. A general test is neither advisable nor practicable. We are, therefore, of the opinion that the Tribunal was not right in concluding that the printed aluminium labels in question are not "products of printing industry".

14. With respect, we agree with the test formulated by the Division Bench. The question is, whether the product would serve any purpose but for the printing. If the product could serve a purpose even without printing and there is no change in the commercial product after the printing is carried out, the process cannot be said to be one of "manufacture".

15. In Collector of Customs, Bangalore v. Indian Coated Cartons (P) Ltd. - 1997 (92) E.L.T. 459 (S.C.) a Division Bench of this Court to which one of us (S.C. Sen) was a party reiterated the principle laid down in Rollatainers Ltd.'s case (supra). That case also related to printed cartons manufactured by the respondents therein. The Bench distinguished the ruling in Metagraphs Pvt. Ltd.'s case.

16. On an analysis of the aforesaid rulings, a two-fold test emerges for deciding whether the process is that of "manufacture". First, whether by the said process a different commercial commodity comes into existence or whether the identity of the original commodity ceases to exist; secondly, whether the commodity which was already in existence will serve no purpose but for the said process. In other words, whether the commodity already in existence will be of no commercial use but for the said process. In the present case, the plain bottles are themselves commercial commodities and can be sold and used as such. By the process of printing names or logos on the bottles, the basic character of the commodity does not change. They continue to be bottles. It cannot be said that but for the process of printing, the bottles will serve no purposes or are of no commercial use."

In view of the above ruling of the Hon'ble Apex Court, we have no hesitation in holding that the processes undertaken by the appellant will be process of manufacture as defined by the Section 2 (f) of Central Excise Act, 1944.

4.4 The fact that the processes undertaken by the appellant on the processed goods amounted to manufacture has been acknowledged and accepted by the department, as they have themselves allowed the clearance of the goods on payment of Central Excise Duty as per sub-rule (2). It is not even the case of the revenue here that finished goods that emerged after the processes undertaken by the Appellant, were cleared without payment of duty. When the revenue accepts the payment of duty on the goods cleared from the manufactory, then it is barred to take a contrary stand for determining the admissibility of credit as has been held by the Hon'ble High Court of Gujarat in case of Creative Enterprises referred to by the Appellant. Hon'ble Bombay High Court has in the case of Ajinkya Enterprises [2013 (294) ELT 203 (Bom)] held as follows:

"8. We see no merit in the above contentions. As rightly contended by the representative of the assessee appearing in person, till 1st March, 2005 the Revenue has accepted that the activity carried on by the assessee constituted manufacturing activity in view of Board Circular dated 7th September, 2001 and accordingly held that the assessee is entitled to take credit of duty paid on HR/CR coils. It is only because, the Board, on 2nd March, 2005 has withdrawn the Circular dated 7th September, 2001 the Revenue is claiming that the activity carried on by the assessee does not amount to manufacturing activity. The question is, whether on the facts of the present case, the Revenue, based on the Circular dated 2nd March, 2005, is justified in calling upon the assessee to reverse the credit or pay the amount to the extent of the credit liable to be reversed, with interest and penalty?

9. It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils, which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted.

10. Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T.

 

586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue."

4.5 In view of the above decisions we do not find any merits in the demand made by the impugned order by denying the CENVAT Credit availed in respect of the processed goods received from the processing house.

4.6 Now we take up the second issue in respect of the goods returned by the Dahanu unit to the appellant, being defective or substandard. Appellants contend that sufficient correlation and identification exists to establish the duty paid character of the goods the fact that such co-relation and identification exists is evident from the Annexure B to the show cause notice, where revenue has itself shown the both the invoices i.e. the invoice issued by them and the Dahanu unit together. Annexure B to the show cause notice is reproduced below:

From the above chart which is Annexure B to the show cause notice, the invoice of the Dahanu unit is shown in second column and the invoice against which the appellant had cleared the goods is shown in the second last column. When revenue can identify the invoice used for the clearance by the Appellant to the Dahanu unit at the time of issue of show cause notice then how then can proceed to state that no such correlation and identification exist.

4.7 To further satisfy ourselves we examine the entire set of documentation against one of the invoices of Dahanu unit.

First picture is the invoice of Dahanu unit and second picture is accompanying challan with the invoice giving the details of the goods covered by the invoice. Third picture is the invoice issued by the appellant and following pictures the accompanying challan. A simple comparison of the accompanying challans give all the details sufficient to correlate and identify the goods covered by the invoice of Dahanu Unit with the invoice of the appellant and establish the duty paid nature of the goods received.

4.8 Interestingly, even the invoice issued by the Dahanu unit gives the detail of duty payment, when all such detail are available on the invoice of Dahanu unit, then can any further correlation and identification be needed. In our view revenue has itself in the show cause notice given sufficient evidences against the case proposed by them. In view of fact that the goods covered by the two invoices can be well co-related the charge made by the revenue for denial of this CENVAT Credit to cannot survive.

 

4.9 Since we are not able to sustain the demand made on any of the issues, we also set aside the demand for interest and penalties imposed.

5.1 The early hearing application filed by Revenue is infructuous and is dismissed, as the appeal itself has been listed for regular hearing.

5.2 In view of our discussions as above, we do not find any merits in the impugned order and set aside the same. Appeal is allowed.

(Order pronounced in the open court)