(2021) 09 CESTAT CK 0029

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 40097 Of 2014

M/s.Elgi Ultra Industries Ltd. — APPELLANT

Vs

Commissioner Of GST And Central Excise — RESPONDENT

Date of Decision : 15-09-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(k), 9(5)

Citation : (2021) 09 CESTAT CK 0029

Hon'ble Judges : Sulekha Beevi C.S., J

Bench : Single Bench

Advocate : M.N. Bharathi, P. Arul C. Durairaj

Final Decision : Allowed

Judgement

1. Brief facts of the case are explained by the Ld. Counsel for the appellant as follows :

(i) M/s. Elgi Ultra Industries Ltd., the appellants herein, are engaged in the manufacturers of Spindle tape and accessories, Belt and accessories, Belt adhesive application, Flat Belt joint press, Nylon Tubing and Loom Components falling under Chapter heading Nos. 4201,3506, 7014, 5406 and 4016 of CETA 1985 respectively.

(ii) The appellants imported V belts and procured "pulleys" locally and availed credit on the same. They have imported poly V belt which were intended to be used at another production facility-wet grinder assembly units. The testing facilities for belts were available only at their Arasur unit. The appellants had taken credit on the same and cleared the same under excise invoice on payment of duty to their job workers for assembly operations. Further the appellants had manufactured belt and removed the same on payment of duty. While removing the manufactured belts, they had also removed 'pulleys' which were bought out items on which credit was taken. Those pulleys were essential for operations of belts removed by the appellants. Belts and pulleys constitute a 'Belting system'.

The appellants had paid duty on the value of both items viz. Belt manufactured by appellants and the pulleys procured locally.

(iii) During the course of audit conducted by the internal audit, the Revenue was of the view that the credit availed by the appellants on the V belts imported and locally procured "pulley" is not correct. It is the case of the Revenue that the appellant herein had imported V belts and procured 'pulleys' locally and wrongly availed Cenvat credit of the duty paid thereon. Since these goods were finished goods, these goods could not be considered to be 'inputs' as per the definition of the Rule 2(k) of the Cenvat Credit Rules. It was the further case of the Revenue that the appellants have not manufactured any final products using these goods as these were cleared under the same description a:s 'pulleys and V belts". Thus, according to the Revenue, the appellants were not manufacturing any goods and the activity that took place was trading of goods and hence availment of Cenvat credit on goods not used in manufacture but in the trading activity was in contravention of Rule 2(k) of the Cenvat Credit Rules, 2004.

(iv) In these circumstances the Revenue issued a show cause notice No.05/2010-JC dated 21.4.2010. The appellant filed a detailed reply to the SCN. Without considering the submissions, the proposals made in the Show cause notice were confirmed. Hence this appeal.

2. Ld. Counsel submitted that The Commissioner (Appeals) in para 6 has observed that the appellant contended that the availment of cenvat credit on the above materials is correct since they tested the materials and transferred the same to their grinder unit which, in turn, supplied the same to the job worker, on payment of duty. However, the authority held that this version of the appellant is not supported by the provisions of Cenvat Credit Rules and is therefore in contravention of Rule 2 (k) and 9(5) of Cenvat Credit Rules 2004. This is not a case of availment of credit and clearance to another unit without payment of duty. The appellant had treated their activity as manufacture and had discharged their liability towards central excise. Having paid the duty it is illegal on the part of the department to turn around and deny the credit alleging that they have not used the inputs for manufacture of final products in their factory. If it is to be done, same would amount to 'double taxation' which is prohibited by law.

3. It is submitted by Ld. Counsel that the issue stands covered by the Tribunal's decision in the case of Ruchi Soya Industries Ltd. Vs CGST & CE Chennai Outer - 2015 (5) TMI 134-CESTAT CHENNAI as well as in the case of CCE Vs Vishal Precision Steel Tubes and Strips Pvt. Ltd. - 2017 (3) TMI 1287-KARNATAKA HIGH COURT. In these circumstances, he prayed that impugned order may be set aside and appeal be allowed with consequential relief.

4. On behalf of the department, Ld. A.R Shri Arul C. Durairaj appeared who reiterated the findings in the impugned order.

5. Heard both sides. It is not disputed that the appellant has cleared the final product viz. Belt & Accessories (Pulleys and V Belts) after payment of excise

duty. When the appellant has discharged the excise duty on final product then the department cannot disallow credit alleging that there is no process of manufacture. In case of any doubt, the department ought to have intimated the appellant before discharge of excise duty. In the present case payment of duty on the inputs is not disputed.

6. The Hon'ble High Court of Bombay in the case of CCE Pune Vs Ajinkya Enterprises - 2013 (294) ELT 203 (Bom.) held that when the duty has been paid on the finished products then the availment of the credit of duty paid on inputs cannot be faulted. This view of the Hon'ble High Court has been applied in the case of CCE Vs Vishal Precision Steel Tubes and Strips Pvt. Ltd. (supra). The Tribunal in the case of Ruchi Soya Industries Ltd. (supra) has followed the decision in the case of Vishal Precision Steel Tubes and Strips Pvt. Ltd. (supra).

7. After appreciating the facts and also applying the ratio of decisions cited supra, I am of the view that the demand cannot sustain. Impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.

(Operative part of the order pronounced in open court)

