(2021) 03 CESTAT CK 0043

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 51344 Of 2019

M/s.Syncom Formulations (I) Ltd. APPELLANT

Vs

Commissioner, Central Goods And Service Tax And Central Excise RESPONDENT

Date of Decision : 24-03-2021

Acts Referred:

Cenvat Credit Rules, 2004 — Rule 2(a), 2(k), 15(2)
Central Excise Act, 1944 — Section 11AC(1)(c)

Citation : (2021) 03 CESTAT CK 0043

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Advocate : Ankur Upadhyay, Pradeep Gupta

Final Decision : Allowed

Judgement

1. Heard the parties and perused the records.

2. The appellant is engaged in the manufacture of P.P. medicaments (pharmaceuticals) falling under Chapter Heading No.3004 of CETA. During the period November, 2015 to Jan., 2016, the appellant purchased corrugated profile sheets, prefabricated modular - cealing panel/wall panel/PVC conduits/wall to ceiling coving/wall to wall coving/single doors/double doors/locks etc., and these were used for creating 'Clean Room'. Clean room is required for maintaining temperature control and 'RH' control, which is essential for manufacture of pharmaceutical products. Moreover, clear room panel is easily cleanable and essential for maintaining the quality of medicines produced.

3. There was an audit during the period 2015-2016, wherein Revenue noticed the details of credit taken on the aforementioned items, which had been taken credit as capital goods. It appeared to Revenue that the aforementioned goods are nether covered under capital goods as defined under Rule 2 (a) nor as inputs under Rule 2 (k) of CCR, 2004. Accordingly, in show cause notice dated 14.06.2017, it was proposed to disallow the cenvat credit of Rs.11,94,406/- and

further penalty was proposed under Rule 15(2) of CCR.

4. The show cause notice was adjudicated on contest vide order-inoriginal dated 31.10.2018, confirming the proposed disallowance of cenvat credit along with equal amount of penalty under Rule 15(2) of CCR read with Section 11 AC(1)(c) of the Central Excise Act.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who was pleased to reject the appeal agreeing with the findings of the Adjudicating Authority. Being aggrieved, the appellant is before this Tribunal.

6. Ld. Counsel for the appellant urges that admittedly the appellant have used the items in dispute as inputs for fabrication of 'clean room' in the factory of the production. Further, it is not disputed that such clean room is essential for manufacture of their dutiable output being medicines/pharmaceuticals. He further draws my attention to the definition of 'input' in Rule 2(k) of CCR, wherein input means - (i) all goods used in the factory of the manufacturer of the final products. Hence, under admitted the facts, the cenvat credit is allowable as input(s), and the Court below have erred in rejecting the cenvat credit as inputs. Accordingly, prays for allowing their appeal with consequential benefits.

7. Ld. Authorised Representative for the Revenue relies on the findings in the impugned order. He also relies on the ruling of this Tribunal in the case of Covalent Laboratories Pvt. Ltd. Vs. CCE, Hyderabad - 2016 (344) ELT 641 (Tribunal-Hyderabad), wherein it has been held that in no way - a clean room be considered as capital goods or component, accessory or part of capital goods and, therefore, held that Covalent Laboratories Pvt. Ltd. (supra) is not eligible for credit availed on prefabricated building parts, walls, panels, etc. for making a clean room.

8. Having considered the rival contentions, I find that admittedly, the appellant have used the disputed inputs for fabrication of clean room, which is essential for manufacture of their dutiable goods, as such clean room is necessary for maintaining proper temperature and hygiene as well as keeping the RH factor in control, and without it manufacture of dutiable medicines is not possible. Further, I find that under Rule 2(k) of CCR, inputs means, "all goods used in the factory of the manufacturer of final products".

9. Accordingly, I hold that the appellant is entitled to cenvat credit on the items in dispute as inputs. Accordingly, the impugned order is set aside. The appeal is allowed. The appellant is entitled to consequential benefits in accordance with law.

[order dictated & pronounced in open court]

