(2021) 10 CESTAT CK 0082

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Central Excise Appeal No. 20476 Of 2021

Sri Chamundeshwari Sugars Ltd. — APPELLANT

Vs

Commissioner Of Central Tax, Mysuru Commissionerate — RESPONDENT

Date of Decision : 29-10-2021

Acts Referred:
Central Excise Tariff Act, 1985 — Chapter 17

Citation : (2021) 10 CESTAT CK 0082

Hon'ble Judges : P. Dinesha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellants are the holders of Central Excise Registration and engaged in the manufacture of Cane Sugar and Molasses classifiable under Chapter 17 of the Central Excise Tariff Act, 1985. It is the case of the Revenue that during the course of audit and on verification of records of the appellant, the following allegations were made:

a) Irregular availment of cenvat credit on Works Contract Service involving the Cenvat Credit of Rs. 16,13,835/-;

b) Irregular availment of Cenvat Credit on structuring materials involving the Cenvat Credit of Rs. 14,12,358/-;

c) Availment of inadmissible Cenvat credit in respect of services used for construction of Road involving the Cenvat Credit of Rs. 2,66,301/-;

d) Availment of inadmissible Cenvat Credit on services used for setting up of New Mill house involving the Cenvat Credit of Rs. 4,63,535/-;

Accordingly, a show-cause notice dated 30/01/2020 was issued proposing to recover the alleged irregularly availed cenvat credit along with applicable interest and penalty. In adjudication, the adjudicating authority having not agreed with the replies of the appellant, proceeded to confirm a demand of Rs. 39,28,489/-

(Rupees Thirty Nine Lakhs Twenty Eight Thousand Four Hundred and Eighty Nine only) along with interest and penalty as proposed, vide Order-in-Original dated 28/04/2020. Aggrieved, the appellant filed an appeal before the First Appellate Authority who also having dismissed the appeal vide impugned Order-in-Appeal No. MYS-EXCUS-000-APP-MSC-120-2020-21 dated 26/03/2021, the same has been assailed in this appeal before this forum.

2. Heard Shri K. Krishnamurthy, learned Consultant for the appellant and Shri K.B. Nanaiah, learned Assistant Commissioner for the Revenue, I have considered rival contentions and also gone through various orders relied upon during the course of argument.

3. I find after going through the reasonings given by the authorities below and also after going through the decisions relied upon by the appellant that the issue of denial of cenvat credit in the case on hand is no more res integra as the same stands settled in favour of the taxpayer.

3.1. In the case of M/s. Kellogg India Pvt. Ltd. Vs. Commissioner of Central Tax, Tirupathi reported in 2020-TIOL-1040-CESTAT-HYD., learned Hyderabad Bench of CESTAT has considered an almost identical issue insofar as it relates to the denial of cenvat credit availed on Works Contract Service, denial of cenvat credit availed in respect of services used for Construction of Road within the factory premises and denial of cenvat credit availed on the services used for setting up of new Mill House within the factory premises and the same has been answered in favour of the taxpayer therein. The relevant observations of the Hyderabad Bench are as under:

"9. This definition has been further enlarged by adding several other input services such as those services used in relation to setting up, modernization renovation etc. The terms "setting up" has been deleted with effect from 01/04/2011 and hence was not on the Statute during the relevant period.

10. The third part of the definition excludes certain types of services and this exclusion part of the definition also does not have in it, the services used in setting up of the plant.

11. Therefore, we find that the services used in relation to setting up of a plant are neither specifically included nor specifically excluded during the relevant period. That takes us to the main part of the definition which, with respect to manufacturer allows cenvat credit of services used in or in relation to manufacture whether directly or indirectly. This definition, in our considered view, is wide enough to cover in its compass any services used for setting up a Plant especially when the services are used for obtaining the land on lease. Without such land no factory can be set up nor can any manufacture take place. We find a direct nexus between the manufacture of the final products and the services used for setting up of plant by leasing the land.

12. In view of the above, we find that the appellant is entitled to cenvat credit of

the disputed amounts and the impugned order needs to be set aside and we do so."

The above view has been reiterated by the very same Hyderabad Bench in its very recent order in the case of Pepsico India Holdings Pvt. Ltd. Vs. Commissioner of Central Tax, GST Commissionerate, Tirupati and connected appeals (date of decision: 26/07/2021). In view of the above ratio decidendi, I am of the view that the denial of cenvat credit on these items is not correct and the impugned order therefore cannot sustain to this extent.

3.2. Further, I also find that as regards the denial of cenvat credit availed on structuring materials like Channels, Angles, Joists, HR Coil/sheet, etc., the ratio laid down in the above cases equally applies. I also find that learned Mumbai bench of CESTAT has considered the very same issue and vide its order reported in 2020-TIOL-530-CESTAT-MUM. in the case of M/s. JSW Steel Coated Products Ltd. Vs. Commissioner, GST and Central Excise, Nagpur has held that the denial of cenvat credit was bad. Following the ratio of the above orders, I am of the view that the denial of cenvat credit in this case cannot sustain.

4. In view of the above, the impugned order is set aside and the appeal is allowed with consequential benefits, if any, as per law.

(Order pronounced in the Open Court on 29/10/2021)