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GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

Office of the Principal Commissioner RA and
Ex-Officio Additional Secretary to the Government of India
8th Floor, World Trade Centre, Cuffe Parade,
Mumbai- 400 005

F.No.198/63/2012-RA /3275

Date of Issue: 28.07.2020

ORDER NO. 519/2020-CX (WZ)/ASRA/MUMBAI DATED 23.06.2020 OF THE GOVERNMENT OF INDIA PASSED BY SMT SEEMA ARORA, PRINCIPAL COMMISSIONER & EX-OFFICIO ADDITIONAL SECRETARY TO THE GOVERNMENT OF INDIA, UNDER SECTION 35EE OF THE CENTRAL EXCISE ACT, 1944.

Applicant : Commissioner, Central Excise, Raigad

Respondent : M/s Rathi Dye Chem Pvt Ltd., Raigad

Subject : Revision Application filed, under Section 35EE of the Central Excise Act, 1944 against the Order-in-Appeal No. BC/255/RGD/2011-12 dated 19.01.2012 passed by the Commissioner (Appeals), Central Excise Mumbai-III.



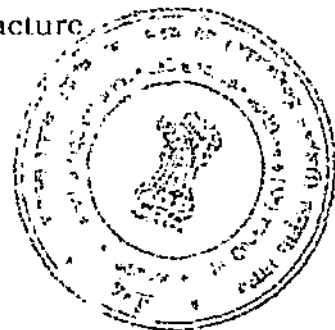
ORDER

This Revision Application is filed by the Commissioner, Central Excise, Raigad (hereinafter referred to as "the Appellant") against the Order-in-Appeal No. BC/255/RGD/2011-12 dated 19.01.2012 passed by the Commissioner (Appeals), Central Excise Mumbai-III.

2. Briefly, during floods on 25.07.2005, finished goods/inputs manufactured by M/s Rathi Dye Chem Pvt Ltd., Plot No. 40, MIDC Dhatav, Roha, Raigad-402 116 (herein after as 'the Respondent') were either damaged or washed away. and the incidence was intimated to the jurisdictional Range Supdt on 27.07.2005 and detailed inventory of the losses was submitted on 10.08.2005 by the Respondent. Then vide their application dated 05.12.2005 initially claimed remission of duty of the following amounts-

- (a) Rs. 3,31,370/- on finished goods washed away in the flood;
- (b) Rs. 41,281/- on finished goods spoiled/damaged in flood;
- (c) Rs.11,211/- on raw material washed away in floods; and
- (d) Rs. 36,552/- on raw material spoiled in floods.

They reversed the Cenvat credit amounting to Rs. 47,763/- in respect of raw material washed away and spoiled due to flood, mentioned at (c) & (d) above. The Respondent vide their letter dated 22.09.2006 further informed that finished goods of 500 Kg valued at Rs. 2,52,950/- and involving duty amount of Rs.41,281/- mentioned (b) above have been reprocessed and the same were cleared for export on 18.08.2006. The Range officer in his verification report dated 30.10.2006 had confirmed the same. Their remission application was decided by the Joint Commissioner, Central Excise, Raigad, vide Order-in-Original No.01/NA/Jt.Commr/RGD/07-08 dated 06.02.2008 by allowing remission of duty of Rs.3,31,370/- subject to the condition that Cenvat credit availed on inputs used in the manufacture



of said finished goods are reversed with interest and the remission of duty amount granted shall not be claimed from the Insurance Company.

3. Being aggrieved, the Respondent went in appeal. Commissioner (Appeal), Central Excise, Mumbai-III vide Order-in-Appeal No. SRK/496/RGD/2008 dated 12.08.2008 has opined that the Joint Commissioner has relied upon the Board's circular No. 800/33/2004-CX dated 01.10.2004, which was issued on the basis of ratio of decision of the Tribunal in Mafatlal Industries Ltd Vs. CCE, Ahmedabad [2003(154)ELT 543]. The decision in Mafatlal Industries Ltd has been overruled by the decision of the Larger Bench in Grasim Industries Vs. CCE, Indore [2007(208) ELT 336(Tri-LB)], in which the Larger Bench has held that in case where remission is granted in respect of goods which were damaged or destroyed by natural causes Cenvat credit on inputs used in the manufacture of the goods need not be reversed. He further observed that the Notification No 33/2007 (NT) dated 07.09.2007 amending Rule 3 of Cenvat Credit Rules, 2004 was effective from 07.09.2007 and will not be applicable in the instant case as incidence has occurred much before that i.e. on 25.07.2005. Therefore, the Commissioner (Appeal) observed that the condition imposed in the impugned order requiring reversal of Cenvat credit taken on inputs used in the manufacturer of finished goods on which the duty is proposed to be remitted, is not sustainable and therefore he has remanded back the case to the original authority for re-consideration of the conditions imposed in the remission order.

4. The Additional Commissioner(Tech), Central Excise, Raigad vide Order-in-Original No. Raigad/ADC/V.Gen (30)274/RGD/05 dated 01.02.2011 rejected the remission application and directed the Respondent to pay the duty amount of Rs. 3,31,370/- along with interest immediately. Aggrieved, the Respondent then filed appeal with the Commissioner(Appeals), Central Excise, Mumbai-III. The Commissioner(Appeals) vide Order-in-Appeal No. BC/255/RGD/2011-12 dated 29.11.2011 allowed the Respondent's appeal on the following ground :

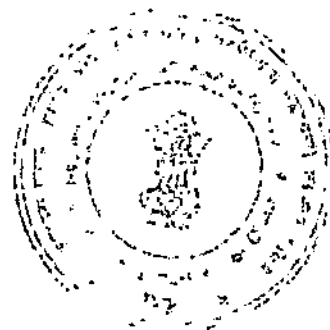


"11. In view of above discussion I find that the element of Excise duty for which remission has been claimed, has not been received by the appellant from insurance company. Cenvat credit involved in the inputs used in the manufacture of finished goods lost in flood is not to be reversed. The appellants are eligible for remission of duty on the goods lost in flood. Since the remission is allowed, the question of payment of interest as directed in the impugned order does not arise."

5. Aggrieved, the Department then filed the current Revision Application on the following grounds:

- (i) As per Clause 2.4 of Part-I of Chapter 18 of CBEC's Excise Manual of Supplementary Instructions 2005, the Cenvat credit of duty paid on inputs contained in finished products on which duty remission has been granted shall have to be reversed
- (ii) The CBEC Circular No.800/33/2004-CX dated 01.10.2004 which provide for reversal of Cenvat in respect of goods for which remission is claimed, was issued on the basis of Tribunal decision in the case of Mafatlal Industries Ltd. Vs. CCE Ahmedabad. [2003(154)ELT 543] has been referred to and emphasized by the CBEC in Circular No. 930/20/2010-CX dated 09.07.2010. Thus the said Circular No. 800/33/2004-CX dated 01.10.2004 is not been rescinded by the CBEC and still holds.
- (iii) The Commissioner(Appeals) failed to appreciate the provisions of law viz. Rule 3(5C) of Cenvat Credit Rules, 2004 (which is reproduced below) which provides for reversal of Cenvat credit on which remission of duty has been granted.

"Where on any goods manufactured or produced by an assessee, the payment of duty is ordered to be remitted under rule 21 of the Central Excise Rules, 2002, the CENVAT credit

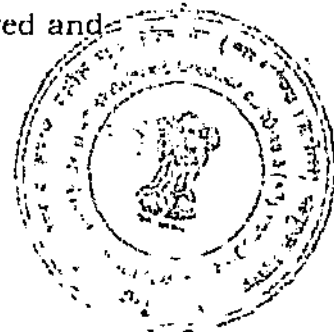


taken on the inputs used in the manufacture or production of said goods shall be reversed."

- (iv) Though the above said sub rule was vide Notification No.33/2007(N.T) dated 07.09.2007, by amending Rule 3 of Cenvat Credit Rules, 2004, and though incidence in the instant case has occurred much before that i.e. on 25.07.2005, the said amendment have retrospective effect as can be seen from the Circulars and judicial pronouncements before the decision in the case of Grasim case. The above said sub-rule appear to have been introduced to negate the decision in Grasim case and other subsequent cases and the intention of the law makers was always for not allowing Cenvat credit on the inputs used in finished goods in respect of which remission of duty is granted. Thus the said Notification No.33/2007(N.T) dated 07.09.2007 is having retrospective effect.
- (v) The Commissioner(Appeals) has thus erred in setting aside the Order-in-Original No. Raigad/ADC/V.Gen(30)274.RGD/05 dated 01.02.2011 and allowing the appeal filed by the Respondent.
- (vi) The Department prayed that impugned order dated 19.01.2012 be set aside and uphold the Order-in-Original dated 01.02.2011.

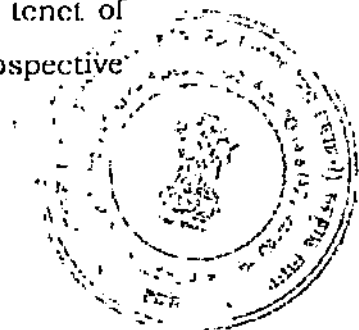
6. Against the grounds filed in the Revision Application, the Respondent filed their cross-objections as follows :

- (i) The Applicant has referred to the CBEC circular No. 800/33/2004-CX dated 01.10.2004 which provides for reversal of Cenvat in respect of goods for which remission has been claimed, which was issued on the basis of the Tribunal decision in the case of M/s Mafatlal Industries Ltd. V/s CCE, Ahmedabad [2003 (154) ELT 543], which has been referred and



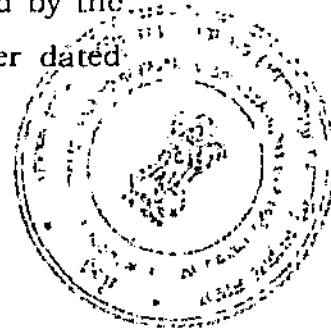
emphasized in CBEC Circular No. 930/20/2010-CX dated 09.07.2010 and has contended that in view of above, the Circular dated 01.10.2004 has not been rescinded and still holds goods.

- (ii) It is on record of several similar judgments that the case of Mafatlal Industries has been overruled by the Larger Bench of the Honorable Tribunal in the case of M/s Grasim Industries Limited Vs CCE, Indore [2007 (2008) ELT 336 (Tri.- L. B.)] and hence the said Circular dated 01.10.2004 becomes ineffective since the same was based on the case of M/s Mafatlal Industries Ltd. Also, the Commissioner (Appeals), vide Order-in-Appeal No. SRK/496/RGD/2008 dated 12.08.2008 had held that the condition about reversal of Cenvat credit on the finished goods on which remission had been granted was not applicable in the instant case as the incident had occurred on 26.07.2005 and the changes in the Cenvat Credit Rules, 2004 were effective from 07.09.2007 and accordingly remanded back the matter to the Original Adjudicating Authority for re-consideration of the conditions imposed in the remission order. As such, the condition of reversal of Cenvat credit cannot be arbitrarily imposed on past cases for the period where there was no stipulation of reversal of Cenvat credit.
- (iii) The Applicant virtually seeks to circumvent and distort the intent of the law and the clear wordings of the Notification No 33/2007-CE (NT) dated 07.09.2007 which clearly specifies that the said amendment shall come into force from the date of publication in the Official Gazette. This being the case, when the wordings of the notification relied upon by the Applicant itself is clear about the date of its enforceability, the Applicant is not at liberty to adduce his own interpretation of the same with regard to its retrospective nature. In any case, it is a settled tenet of administration of justice that no statute can have retrospective



effect unless so specifically provided under the said statute. In the instant case, the wordings of the notification itself is very clear that it would be applicable only prospectively. As such, the above ground of the Applicant is bereft of any sound reasoning and does not sustain the test of legality. Also, the judgment relied upon by the Commissioner (Appeals) are squarely applicable to the case.

- (iv) The Applicant is trying to re-invent the wheel in as much as even when the Insurance Company itself (which is also a Public Sector Company) certifies that no element of Cenvat credit is involved in the claim amount and the Commissioner (Appeals) as well as the Original Authority have already accepted the status, the Applicant is now bringing new grounds of the claim amount being in direct proportion to duty rate prevailing at that time. It is natural that duty remission would always be for the rate prevailing at the time of clearance. As such, had the goods not destroyed the finished goods, the duty claimed as remission would have to be paid by the Respondent at the time of clearance of the said goods from the factory. This is exactly the duty amount that the Respondent had sought to be remitted.
- (v) The Applicant has once again sought to rake up the insurance issue, despite being settled at original as well as appellate authority. In fact the above issue was brought up only during denovo proceedings although the matter was remanded only for re-consideration of conditions imposed while sanctioning the remission for Rs. 3,31,370/-. The remission Sanctioning Authority, therefore, exceeded the scope of remand, which was only to consider the validity of conditions imposed. The issue of insurance claim was never the subject matter in Order-in-Original dated 06.02.2008 sanctioning the remission application. The remission claim had been duly verified by the jurisdictional Central Excise Superintendent vide letter dated



10.08.2006, 01.12.2006 and 15.05.2007 and had reported to the Adjudicating Authority, they have not included the duty amount in the claim lodged with the insurance and the remission of duty claims is only in respect of finished goods which were washed away in the floods. However, they have not reversed the Cenvat credit in respect of inputs used in the finished goods washed away in the flood.

- (x) As such, extraneous issues, not mentioned or discussed or not subject matter in Original Order cannot be raked up at during remand proceedings (and beyond the scope of remand) or at the Appellate level. Besides, the insurance issue has already been settled by the Commissioner (Appeals) in her Order-in-Appeal dated 19.01.2012 against which the Applicant has filed the Revision Application. The Commissioner (Appeals) has clearly observed that the element of excise duty for which remission has been claimed, had not been received by the Respondent from the Insurance Company.
- (xi) In such a scenario, the above grounds of the Applicant is outside the scope of remand, not part of Original Order sanctioning the remission, effectively disproved by the Certificate of the Insurance Company and settled by the Commissioner (Appeals) and is therefore, not tenable in law.
- (xii) The Respondent submitted that the Order dated 19.01.2012 of the Commissioner (Appeals) is legal and proper and the Application deserves to be set-aside.

7. A personal hearing in the case was held on, 27.11.2019 which was attended by Shri Pankaj Pai, Consultant on behalf of the Respondent. No one from the Applicant side attended the hearing. They reiterated the grounds in reply to appeal before the Commissioner(Appeals).



8. Government has carefully gone through the relevant case records available in case files, oral & written submissions and perused the impugned Order-in-Original and Order-in-Appeal.

9. On perusal of records, it is observed that the issue of remission was decided in the Respondent's favour by the Joint Commissioner, Central Excise, Raigad, vide Order-in-Original No.01/NA/Jt.Commr/RGD/07-08 dated 06.02.2008 by allowing remission of duty of Rs. 3,31,370/- in respect of the finished goods washed away in floods subject to the condition that Cenvat credit availed on inputs used in the manufacture of said finished goods are reversed with interest and the remission of duty amount granted shall not be claimed from the Insurance Company. The Respondent filed appeal against this order only to contest the condition of reversal of Cenvat credit on the inputs used in the goods lost in flood and in respect of which remission was allowed.

10. Government notes that Rule 3(5C) of Cenvat Credit Rules, 2004 was introduced w.e.f. 07.09.2007 vide Notification No. 33/2007 (NT) date 07.09.2009 which provides for reversal of Cenvat credit on which remission of duty has been granted and clearly specifies that the said amendment shall come into force from its date of publication in the Official Gazette. It is a settled tenet of administration of justice that no statute can have retrospective effect unless so specifically provided under the said statute. Before 07.09.2007, there was no requirement of reversal of credit and law at relevant point of time was governed by Larger Bench of Tribunal in Grasim Industries [2007 (208)ELT 336 (Tribunal-LB)] and Government is in agreement with the findings of the Commissioner(Appeals).

11. Further, Government observes that the Oriental Insurance Company Ltd have certified that "... that the amount of claim settled did not include Excise Duty (CENVAT) component. We have settled the claims net off CENVAT. And also as per the details submitted by the Respondent vide their letter dated 10.08.2005 addressed to the Superintendent, Central Excise, Roha



Finished Material	Qty(Kg)	Value (Rs)	Duty (16%)
Material washed away by floods	11358	2030455	324873
Material spoiled because of floods	500	252950	40472
Total	11858	2283405	365345

Government notes that the remission claim had been duly verified and reported by the jurisdictional Assistant Commissioner vide letter dated 10.08.2006, 01.12.2006 and 15.05.2007 and had reported that the claim lodged with the Insurance and the remission of duty claimed was only in respect of finished goods which were washed away in the floods. Government is in agreement with the findings of the Commissioner(Appeals) that the amount received by the Respondent from the Insurance company was only value of the Finished Material goods and did not include Cenvat Credit duty.

12. In view of the above discussions and findings, Government upholds the Order-in-Appeal No. BC/255/RGD/2011-12 dated 19.01.2012 passed by the Commissioner (Appeals), Central Excise Mumbai-III.

13. The Revision Application filed by the department is disposed off as above.

(SEEMA ARORA)

Principal Commissioner & Ex-Officio
Additional Secretary to Government of India.

ORDER No. 519/2020-CX (WZ)/ASRA/Mumbai DATED 23.08.2020.

ATTESTED

To,
The Commissioner of GST& Central Excise
Raigad Commissionerte

Copy to:

1. M/s Rathi Dye Chem Pvt Ltd., Plot No. 40, MIDC Dhatav, Roha, Raigad-402 116.
2. Sr. P.S. to AS (RA), Mumbai
3. Guard file
4. Spare Copy.

B. LOKANATHA REDDY
Deputy Commissioner (R.A.)

