

ORDER

OD – 3

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/6/2020
IA NO: GA/1/2020 (Old No: GA/989/2020)
COMMISSIONER OF CGST AND CS, KOLKATA
SOUTH COMMISSIONERATE, KOLKATA
VERSUS
M/S. EAST INDIA PHARMACEUTICAL WORKS LIMITED

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 9th February 2024.

Appearance:
Mr. Arnab Chakraborty, Advocate
Mr. Aniket Chaudhury, Advocate
...for the respondent.

1. Case called out. No one appears on behalf of the appellant to press the appeal. Sri Arnab Chakraborty, learned counsel for the respondent assessee is present.
2. The assessee's Excise Appeal No.76059 of 2019 was allowed by order dated 09.08.2019 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata. In the aforesaid impugned order, the Tribunal has recorded the following findings:-

"4. We find that in the instant case there is no dispute that the subject goods were transferred by the appellant to its sister unit. As such, the duty amount demanded is available as credit in the sister unit of the appellant under the Cenvat Credit Rules. Consequently, this will lead to a revenue neutral situation. In such scenario there is no justification to

demand of duty, as held by the Tribunal in the cases of **Anglo-French Textiles** Vs. **CCE, 2018 (360) ELT 1016 (Tri- Chennai)**, affirmed by the Hon'ble Supreme Court in the case of **Commissioner** Vs. **Anglo-French Textiles, 2018 (360) ELT A301 (SC)** and **Commissioner of Central Excise** Vs. **Special Steel Limited, 2015 (329) ELT 449 (Tri-Mumbai)**, affirmed by the Hon'ble Supreme Court in the case of **Commissioner of Central Excise** Vs. **Special Steel Limited, 2016 (334) ELT A123 (SC)**. It has also been so held by this Bench of the Tribunal, following the above decisions, in Appeal No. E/256/2010 (SAIL, DSP Vs. Commr. of C.Ex., Bolpur), Order No. F.O./77178/2018 dated 17.09.2018.

5. The Commissioner in support of his findings has relied upon CBEC's Circular No. 940/01/2011 dated January 14, 2011 which provides that credit be disallowed on duty paid on goods exempted under Section 5A of the Central Excise Act. However, we find that in the present case the said goods are not enjoying any exemption under Section 5A of the Act. Therefore this circular has no relevancy.

6. Further, dealing with the said circular dated 14.01.2011 the South Zonal Bench of the Tribunal in **Neuland Laboratories v CCE, 2015 (317) ELT 705 (T)**, in paragraph 7 of the order has observed as follows:

"The Board assumes that if an assessee takes credit of duty which was not required to be paid but paid, availment of credit would attract the provisions of Rule 14 of the Cenvat Credit Rules. The conclusion is that the credit which was taken wrongly would arise when an assessee is required to determine whether the inputs/capital goods received by him are liable to duty or not and whether an assessee is required to determine whether the inputs/capital goods received by him are liable to duty or not and whether duty is payable or not. There is no rule which puts an obligation on the receiver of goods. When we take note of the fact that the assessee may receive inputs/capital goods/services classifiable under almost all the headings, it is difficult to imagine

that the legislature would require the assessee to determine whether duty is payable for all these items or not and then take credit. Even a jurisdictional Central Excise Officer may not have all the items listed in the Schedule for assessment. In fact assessment has been taken away even from the Central Excise Officer. That being the case, the Board's circular which has been issued without taking into consideration and considering the implications of the provisions and implications of the instructions on the assesseees cannot be applied blindly to arrive at a conclusion against the assessee."

*The appeal of the Revenue against this order was rejected by the Hon'ble Andhra Pradesh High Court in **Commissioner v. Neuland Laboratories Ltd**, 2015 (319) ELT A181 (AP).*

7. By following the above decisions, we set aside the impugned order and allow the appeal filed by the appellant, with consequential relief."

3. We find that the impugned order of the Tribunal does not give rise to any substantial question of law, inasmuch as the controversy being raised by the appellant stands concluded by judgments mentioned in the order of the Tribunal itself.
4. In view of the aforesaid, since no substantial question of law is involved in the impugned order by the Tribunal, therefore, the appeal is dismissed at the admission stage.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)