



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.46 OF 2024

Commissioner of CGST & Central Excise,
Daman Commissionerate,
[Erstwhile known as the Commissioner of
Central Excise, Customs & Service Tax,
Silvassa] of GST Bhavan, RCP Compound,
Daman Road, Chala, Vapi – 396 191

...Appellant

Versus

Huhtamaki PPL Ltd.
Having its Office at
Survey No.33/1, at Post
Umerkui, Silvassa

...Respondent

Mr. Karan Adik a/w Ms. Maya Majumdar for Appellant.
Mr. Prakash Shah (through VC) a/w Mr. Jas Sanghavi (through VC)
and Mr. Mohit Raval i/b. PDS Legal for Respondent.

CORAM : M. S. Sonak &
Jitendra Jain, JJ.

RESERVED ON : 18 December 2024

PRONOUNCED ON : 19 December 2024

JUDGMENT (Per Jitendra Jain J):-

1. Heard learned counsel for the parties.
2. The Appellant-Revenue filed this appeal under Section 35G of the Central Excise Act, 1944, proposing to raise the following substantial questions of law arising out of the order dated 20 October 2023 passed by the Tribunal.

Substantial Questions of Law

“(i) Whether the CENVAT Credit taken by the Respondent on “Engraved Printing Cylinder” & “Copper Engraved Cylinder” which were

unconditionally fully exempted from payment of duty vide Notification No.49/2006-C.E., dated 30.12.2006, will be treated as deposit in terms of Section 11D of the Central Excise Act, 1944 and duty so paid will not be treated as duty of excise for taking CENVAT credit in terms of Rule 3 of the CENVAT Credit Rules, 2004 or otherwise?

- (ii) Whether the CESTAT has erred in dropping whole of the duty demand of wrongly/excessively availed CENVAT Credit to the tune of Rs.2,04,41,446/- as detailed in Annexure-'X' appended to the SCN alongwith consequential interest and penalties?*
- (iii) Whether the confessional statement is not sufficient corroboration to prove wrong availment of CENVAT Credit by the Respondent?"*

At the time of the hearing, Mr. Adik learned counsel for the Appellant-Revenue has pressed for only Question Nos.1 and 2 and not Question No.3

3. The short issue involved in the present appeal, as per the Appellant-Revenue, is whether CENVAT Credit on "Engraved Printing Cylinder" & "Copper Engraved Cylinder" can be denied to the Respondent-Assessee on the ground that such Cylinder were not liable to pay the excise duty although the supplier from whom the Respondent- Assessee has purchased these goods has wrongly paid the duty, since these goods were exempted and no duty was required to be paid by the supplier.

4. The Tribunal in paragraph 4 of its order has given a finding that there is no evidence on record that the payment of duty by the supplier was questioned / challenged / disputed by their jurisdictional officer and since the payment of duty by the supplier is found to be legal and correct, the Respondent-Assessee cannot be denied benefit of CENVAT credit. The learned counsel for the Appellant-Revenue has not challenged this finding of fact as incorrect. Therefore, on this very limited ground since these findings are not challenged and this being a

finding of fact rendered by the final fact finding authority, in our view, no substantial questions of law can be said to arise from the impugned Tribunal's order.

5. Secondly, the Tribunal in the impugned order has followed the decision of this Court in the case of *Commissioner of Central Excise vs. Nestle India Ltd.*¹ and its own decision in the case of *Commissioner of Central Excise, Customs and Service Tax vs. Kris Flexipacks Pvt. Ltd.*². Nothing has been brought to our notice that the decision of the Tribunal in the case of *Kris Flexipacks Pvt. Ltd. (supra)* has been challenged by the Appellant-Revenue before the higher forum. Therefore, even on this count, no substantial questions of law would arise since the order of the Tribunal in the case of *Kris Flexipacks Pvt. Ltd. (supra)* has been accepted.

6. The Tribunal has relied upon the decision of the Gujarat High Court, Madras High Court and Punjab and Haryana High Court in paragraphs 6, 8 and 9 of its order and same has not been shown to us as being incorrect or having been challenged before the Supreme Court. The Tribunal based on these decisions have stated that it is settled by various High Courts and the Tribunal that even if excise duty is not payable on the product for any reason, but the Assessee has paid the excise duty and said payment is not challenged or questioned then no question can be raised as regards availment of the credit by the recipients of goods. The Tribunal has applied these judgments since the facts were identical and no perversity is shown to us by the Appellant-Revenue in this approach of the Tribunal.

7. Mr. Prakash Shah, learned counsel for the Respondent, has relied upon the decision of this Court in the case of *The Commissioner*

1 2012 (275) ELT 49 (Bom.)

2 2023 (7) TMI 943

*of Central Excise vs. M/s Betts India Ltd.*³, in which the appeal of the Revenue was dismissed based on an identical fact situation.

8. In our view, for the reason stated above and following decisions of the Co-ordinate Benches of this Court, no substantial questions of law arise from the Tribunal's order dated 20 October 2023, and, therefore, the appeal of the Appellant-Revenue is dismissed.

(Jitendra S. Jain, J.)

(M. S. Sonak, J.)

3 2008 (10) TMI 640 (Bom.)