

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/15/2011

COMMISSIONER OF CENTRAL EXCISE, KOLKATA-V, COMMISSIONERATE
VS
M/S INDUSTRIAL PACKAGING CO.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 7th August, 2025.

Appearance :
Mr. Uday Shankar Bhattacharya, Adv
Mr. Tapan Bhanja, Adv. ...for appellant.

The Court :- This appeal filed by the revenue under section 35G of the Central Excise Act, 1944 [the Act] is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata [Tribunal] dated 23rd March, 2011 in appeal No.E-467/2009. The appeal was admitted on the following substantial question of law.

“Whether the learned Tribunal below committed substantial error of law in dismissing the appeal preferred by the revenue by relying upon the decision of a Co-ordinate Bench of the Tribunal notwithstanding the fact that the word ‘procured’ has replaced the word ‘purchase’ appearing in Rule 7(4) of the Cenvat Credit Rules 2001-2002 with effect from 1st March, 2003 vide notification 13/2003-CE(NT) dated 01.03.2003 whereas the impugned demand relates to the period from April, 2000 to February, 2002 ?”

We have heard Mr. Uday Shankar Bhattacharya, learned senior standing counsel assisted by Mr. Tapan Bhanja, learned advocate for the appellant. None appears for the respondent/assessee.

The revenue was unsuccessful before the learned Tribunal in their challenge to the Order-in-Original passed by the Commissioner of Central Excise dated 23rd March,

2009. The respondent was issued a show cause notice-cum-demand dated 14th May, 2004 alleging that the respondent had received soap noodles from Garden Reach factory of M/s. Hindustan Lever Ltd. for manufacturing of soap on behalf of M/s. Hindustan Lever Ltd. and thus the transfer did not involve sale resulting in irregular availment of Cenvat Credit during the period from April, 2000 to February, 2002 and that they are liable for payment of Central Excise duty under section 11A of the Act as well as liable to pay penalty under the erstwhile Rule 173Q of the Central Excise Rules, 1944 and Rule 25 of the 2002 Rules. The assessee submitted their reply stating that the input 'soap noodles' was covered under the provisions of Rule 57AA as an 'input'. That Rule 57AC(3) was a mandatory provision allowing credit of duty received in the factory of manufacture, whereas Rule 57AE(3) was a procedural provision and, therefore, purchase was not mandatory for availing credit. It was further contended that job workers can avail credit even when inputs were not owned by them and in support of the contention relied upon as many as four decisions of the Co-ordinate Bench of the Tribunal. It was further submitted that the expression 'received/procured' existed in the Cenvat Credit Rules prior to 1.4.2000 and again with effect from 01.03.2003. So, it should be deemed to be existed even during the interregnum period of 01.04.2000 to 28.02.2003. The adjudicating authority namely, the Commissioner of Central Excise, Kolkata-V considered the said provision as well as the decision and held that when the term 'purchase' was substituted by the term 'procured' with effect from 01.03.2003. The amended Cenvat Credit Rules, 2000 cannot prohibit credit when inputs was specified under Rule 57A read with 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is sine qua non. Accordingly, taking note of the said legal position, the Commissioner dropped the proceeding.

Aggrieved by the same, the revenue filed appeal before the Tribunal. Before the Tribunal, none appeared for the appellant/revenue. Yet, the learned Tribunal had gone through the grounds raised and also took note of the decision of the learned Coordinate Bench in *Exide Industries Ltd. vs. Commissioner of Central Excise, Haldia, 2008(226) ELT 249 (Tri.-Kolkata)*, wherein the Tribunal allowed credit to the job workers in respect of inputs received. Further, the Tribunal noted that the effect of the substitution of the word 'procured' was also considered in the case of *Exide Industries Ltd. [supra]* and the said decision was not reversed or stayed by the High Court.

Thus, we find that the decision taken by the Tribunal is just and proper and does not call for any interference.

Accordingly, the appeal fails and the same is dismissed and the substantial question of law framed is answered against the appellant/revenue.

(T.S. SIVAGNANAM, CJ)

(CHAITALI CHATTERJEE (DAS), J.)