CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2249 of 2010

(Arising out of Order-in-Appeal No.135/2010-CE dated 25.4.2010 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.)

M/s. Geltec Private Limite
No.24, 26/3, 27/2,
Yadavanahalli Village,
Atibele Hobli, Hosur Road,
Neralur Road,
Anekal Taluk,
Bangalore – 562 107. Appellant(s)

Versus

The Commissioner of Central Excise
CR Building,
Queens Road,
Bangalore – 560 001. Respondent(s)

Appearance:

Mr. D. Arvind, CA — For the Appellant

Mr. H. Jayathirtha, AR — For the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 21114 /2023

Date of Hearing: 13.10.2023
Date of Decision: 13.10.2023

Per : DR. D.M. MISRA

This appeal is filed against Order-in-Appeal No.135/2010-CE dated 25.4.2010 passed by the Commissioner of Central Excise (Appeals), Bangalore.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of pharmaceutical products viz., 'soft gel capsules' falling under Chapter 29 and 30 of Central Excise Tariff Act, 1985. During the course of manufacture, the product viz., "Gelatin Mass Waste" emerges, which the appellant destroyed in their own factory and in compliance with the provisions of Drugs and Cosmetic Act and Rules made therein, since it is a bio-hazardous product. During the period 2004-2007, they have applied for remission of duty considering the same as excisable goods under Rule 21 of the Central Excise Rules, 2002. However, during the relevant period September 2007 to March 2008, they had destroyed the said product inside the factory without seeking permission from the department in terms of provio to Rule 21. Consequently, a show-cause notices were issued with proposal for reversal of CENVAT credit of Rs.45,74,204/- used in the manufacture of such waste product with interest and proposal for penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the learned Commissioner (A) who in turn rejected their appeal.

3. At the outset, the learned Chartered Accountant for the appellant submits that the department has not established that the 'Gelatin Mass Waste' generated during the course of manufacture is not a waste product but an excisable goods; therefore, confirming reversal of CENVAT credit used in or in relation to manufacture of said waste product is bad in law. In support, he refers to the judgment of this Tribunal in their own

case reported as ***2009 (243) ELT 586 (Tri.-Bang.)*** for the period August 2001 to March 2006 also for the subsequent period following the Tribunal's judgment upheld by the Hon'ble Karnataka High Court as reported in **2012 (281) ELT 170 (Kar.)**. The learned Commissioner, Bangalore dropped the show-cause notice for the period from April 2009 to December 2011. He submits that the present proceedings should also be decided accordingly.

4. Learned AR reiterated the findings of the learned Commissioner (A).

5. Heard both sides and perused the records.

6. The short issue involved in the present appeal is for consideration as to whether the product "Gelatin Mass Waste" generated during the course of manufacture of finished goods being a waste product, the CENVAT inputs gone into its generation is required to be reversed.

7. We find that this Tribunal in their own case considering the Circular issued by the Board held in their favour observing that demand for reversal of CENVAT credit on the waste product is unsustainable in law. The said view has been later upheld by the Hon'ble Karnataka High Court as reported in **2012 (81) ELT 170 (Kar.)** where their Lordship observed as follows:

> **"4.** The material on record discloses that it was destroyed within the factory premises and it was not removed. Therefore the liability to pay excise duty on the said mass does not arise. Even if the said waste is excisable and duty is payable, that in no way enables the authorities to insist on

> reversal of Cenvat credit or payment of excise duty. The entire claim is on the assumption that the input which is brought into the factory is now sought to be removed in the same condition. Then only sub-rule (5) of Rule 3 applies. In the instant case, the input is not removed, 'as such' from the factory premises and therefore the said Rule has no application to the facts of this case and therefore there is no liability to pay excise duty on the said gelatin waste. Though gelatin waste is also excisable, when it is destroyed the Commissioner has the power to waive the payment of excise duty payable on such excisable item.
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> **5.** In that view of the matter, seen from any angle the order passed by the Tribunal granting the benefit cannot be found fault with. Therefore, we do not see any merit in this appeal and accordingly it is dismissed and the substantial questions of law are answered in favour of the assessee and against the revenue."

8. In view of the aforesaid principle of law settled by the Hon'ble High Court and later upheld by the Hon'ble Supreme Court reported as **2014 (304) ELT A85 (SC)** by dismissing the appeal filed by the Revenue; we do not find any merit in the impugned order. Consequently, impugned order is set aside and appeal is allowed with consequential relief, if any, as per law.

(Order dictated and pronounced in Open Court.)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

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