

**CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH AT HYDERABAD**

Division Bench
Court - I

Appeal No.	Appellant	Respondent	Impugned Order No. & Date
E/293/2009	Sudhakar Plastic Ltd.	CCE, C&ST, Hyderabad-III	O-I-O No. 30/2008-CE-HYD Adjn. Commr, dated 18.12.2008 passed by CCCE, Hyderabad-III
E/391/2009	CCE, C&ST, Hyderabad-III	Sudhakar Plastic Ltd.	O-I-O No. 30/2008-CE-HYD Adjn. Commr, dated 18.12.2008 passed by CCCE, Hyderabad-III
E/2293/2010	Sudhakar Plastic Ltd.	CCE C&ST, Hyderabad-III	O-I-A No. 27/2010 (H-III) (CE), dt. 16.08.2010 passed by CCCE&ST (Appeals-III), Hyderabad.

Appearance

Shri G. Natarajan, Advocate for the appellant

Shri N. Bhanu Kiran, Asst. Commissioner/AR for the Respondent.

Coram:

Hon'ble Mr. M.V. RAVINDRAN, MEMBER (JUDICIAL)

Hon'ble Mr. P.V. SUBBA RAO, MEMBER (TECHNICAL)

Date of Hearing: 05.02.2019
Date of Decision: 21.02.2019

FINAL ORDER No. A/30251 - 30253/2019

[Order per: Mr. M.V. Ravindran)

1. All these appeals are directed against Order-in-Original No. 30/2008-CE-HYD Adjn. Commr, dated 18.12.2008 and Order-in-Appeal No. 27/2010 (H-III) (CE), dt. 16.08.2010.

2. The relevant facts that arise for consideration are appellant assessee is the manufacturer of PVC Pipes, HDPE and LDPE pipes for which he consumes raw materials like PVC resin, master batch and chemicals, LDPE and HDPE granules. As and when they clear LDPE pipes for agricultural and horticultural applications, as a part of drip irrigation system, they classify the said LDPE pipes under chapter heading 8424 9000 as “Parts of mechanical appliances of a kind used in agriculture or horticulture” and claim exemption from payment of duty of excise under S.No. 70 of notification No. 3/2005-CE, dt. 24.02.2005. While clearing the said goods on claiming the exemption, having availed CENVAT Credit of duties paid on inputs, input services and capital goods, they make a payment of 10% of the value of such exempted goods cleared as per provisions of Rule 6(3) of CENVAT Credit Rules 2004. The case of Revenue in the show cause notice is that since LDPE pipes according to appellant are classifiable under 8424 9000 and are unconditionally exempted, the appellant assessee’s option of paying central excise duty on LDPE pipes cleared to dealers is in violation of provisions of Section (1A) of Section 5(A) of Central Excise Act and CENVAT credit availed on capital goods, inputs and input services which are exclusively used in the manufacture of exempted goods needs to be reversed; show cause notice was issued, which sought demand of reversal of credit, interest and proposed to impose penalties. The appellant herein contested the show cause notice on merits. The adjudicating authority, after following due process of law, confirmed the

demands so raised along with interest and imposed penalties. Aggrieved by such an order, an appeal was preferred to the first appellate authority. The first appellate authority, after following due process of law, partly allowed the appeal of the appellant i.e. demand pertaining to the period prior to 13.05.2005 on the ground that sub section 1(A) of Section 5(A) of Central Excise Act, 1944 came into existence from that date, and upheld the demand of CENVAT credit availed post 13.05.2005 on inputs and input services holding that assessee appellant has to avail the benefit of exemption notification. Both the appeals are directed against these findings.

3. Ld. Counsel submits that the findings of the lower authorities are totally incorrect inasmuch LDPE pipes manufactured by the appellant are classifiable under chapter 39 only and are liable to Central Excise duty but in some situations wherein the LDPE pipes are manufactured along with some implements like sprayer etc., they get classified under chapter 8424 9000 and are used as agricultural or horticultural appliances. It is his submission that when end use of pipes is not known, it would merit classification only under chapter 3917 and attracts central excise duty. He would submit that whenever appellant assessee is not sure of the end use of LDPE pipes, they have paid duty hence allegation of the department that inputs (LDPE granules), capital goods and input services used in the manufacture of LDPE pipes are exclusively used, is not correct and LDPE pipes are not totally exempted. It is his further submission that since LDPE

pipes are also cleared on payment of duty, they are eligible to avail credit of common inputs, common capital goods and common input services and having availed CENVAT credit on all these items, appellant assessee reverses/pays 10% of the value of exempted goods as provided under Rule 6(3) of CENVAT Credit Rules 2004, which is not denied or disputed.

4. Ld. DR on the other hand draws our attention to the invoices issued by the appellant and submits that the said invoices clearly indicate that these pipes are exempted if they are used for agricultural or horticultural purposes. He would submit that there is no dispute that these pipes i.e. LDPE pipes are used in horticultural and agricultural purposes. He would also submit that LDPE granules which are procured by the appellant are and can only be used by the appellant assessee for manufacturing of LDPE pipes only and could not have been used anywhere else hence provision of Rule 6(1) of CENVAT Credit Rules will directly come in play in this case. He submits that appellant having claimed the benefit of exemption notification NO. 3/2005-CE, dt. 24.02.2005 for the very same purpose cannot turn around and say that he is not claiming the said benefit of the exemption notification and ready to discharge Central Excise duty on LDPE pipes. As regards department's appeal, it is his submission that the first appellate authority has erred in extending the benefit of clearing the LDPE pipes without payment of duty as well as with payment of duty and not upholding the order of the adjudicating authority for reversal of CENVAT

Credit on the inputs and input services which are exclusively used for manufacturing of LDPE pipes.

5. On careful consideration of the submissions made, we find that appellant assessee consumes LDPE granules, input services, common inputs and capital goods for manufacturing of LDPE pipes. It is also undisputed that appellant when he clears the LDPE pipes to consumers for use the same for agricultural and horticultural purposes, claims the exemption under notification No. 3/2005-CE, classifying the said LDPE pipes under chapter heading 8424 9000 as mechanical appliances. It is very clear from the records and from the submissions of both sides that there is no dispute on the classification of the products of LDPE pipes attached with sprayer for projecting, dispersing or spraying liquids etc. under chapter 8424. The only dispute is regarding the LDPE pipes which were cleared for other than agricultural and horticultural purposes. According to appellant assessee, these LDPE pipes are cleared to their dealers for other than agricultural and horticultural purposes, would merit classification under chapter 3917 and is liable for Central Excise duty and no exemptions are available hence they have correctly availed the benefit of CENVAT credit of the duties paid on LDPE granules, input services and capital goods.

6. On perusal of the sample invoices before us, we find that appellant herein has cleared the LDPE pipes to their customers on payment of Central Excise Duty, classifying the same under chapter heading 3917, paying duty at 16% Advalorem and education cess of 2% of the duty. While the goods are cleared on payment of central excise duty is undisputed and the duty has been accepted as revenue, it seems that adjudicating authority as well as first appellate authority have overlooked this fact that the product LDPE pipes are classifiable under chapter heading 39 but if they are cleared for special purposes like agricultural and horticultural purposes along with various mechanical appliances which are attached during the process of manufacturing, the said items get classified under chapter heading 84 for which there is an for exemption notification. We also find a note that appellant assessee had been reversing 10% of the value of exempted goods cleared by them correctly so, by following the provisions of Rule 6 of CENVAT Credit Rules, 2004. In our considered view, when LDPE pipes are not cleared for agricultural and horticultural purposes, appellant's claim that these products are liable to Central Excise Duty as being classifiable under chapter 39 seems to be correct proposition of the law and we accept the same.

7. Accordingly, in view of the foregoing, the impugned order to the extent it is challenged by the appellant assessee is set aside and Revenue's appeal stands rejected as on merits we have allowed the appeals of the appellant assessee.

8. Appeals of appellant assessee are allowed and Revenue's appeal is rejected.

(Pronounced in open court on 21.02.2019)

(P.VENKATA SUBBA RAO)
MEMBER (TECHNICAL)

(M.V. RAVINDRAN)
MEMBER (JUDICIAL)

Vrg