

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
MUMBAI**

WEST ZONAL BENCH, MUMBAI

**Excise Appeal No. 85309 of 2019**

(Arising out of Order-in-Appeal No. MKK/219/RGD APP/2018-19 dated 12.09.2018 passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh.)

**M/s Gelnova Laboratories (I) Pvt. Ltd.** .....Appellant

**Plot C – 125, TTC Industrial Area,  
MIDC, Pawane,  
Navi Mumbai – 400 705**

*VERSUS*

**Commissioner of Central Excise, Belapur** .....Respondent

**CGO Complex, 10,  
CBD Belapur,  
Navi Mumbai – 400 614**

**APPEARANCE:**

Shri Sunil Agrawal, Advocate for the Appellant  
Shri Sanjay Hasija, Superintendent, Authorised Representative for the Respondent

CORAM:

**HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)**

**FINAL ORDER NO. A/85195 / 2022**

Date of Hearing: 16.12.2021

Date of Decision: 11.03.2022

Rejection of CENVAT credit on the ground that items are not capital goods as supplier has described it as "steel furniture" and classified it under C.H. 94.03 in the invoice, is assailed in this appeal.

2. Factual backdrop of the case is that appellant had received certain invoices from the supplier which were of the nature of components of machinery used for manufacturing goods-machinery falling under Chapter 84798970 but CENVAT credit was denied to the appellant on the ground that in certain invoices including invoice dated 29.04.2009 under the name of excisable goods "steel furnitures" has been mentioned with Chapter Heading/Sub-Heading No. 94032010. Learned adjudicating authorities vide his order dated 21.08.2014 has refused the credits holding that supplier of the said goods has classified the goods under C.H.94032010 and goods falling under the said Chapter is not covered within the definition of "capital goods" as provided in Rule 2(a) of the CENVAT Credit Rules, 2004. Such denial of CENVAT credit to the appellant got confirmed by the Commissioner (Appeals) vide his order dated 12.09.2018 after CESTAT remanded the matter back to him vide order dated 15.09.2017 condoning delay of one day in preferring the appeal before the first appellant authority. Appellant is before this Bench assailing the said order.

3. During the course of argument learned Counsel for the appellant Shri Sunil Agrawal, with reference to judicial decisions reported in the case of *Daya Sugar* reported in 2015 (316) ELT 394 (All.) and *Shree Cement Ltd.* reported in 2017 (345) ELT 277 (Tri.-Del.) argued that when classification by the supplier is wrong, eligibility to CENVAT credit is to be decided on the basis of actual usage of the goods. He took us to the sample invoice dated 29.04.2009 and stated that in a normal course, staff in-charge of

preparation of invoice, put the heading and sub-heading in the invoice mechanically with a broad description for which error, in reflecting the name of goods and Chapter Heading, had occurred but in the body of the invoice, where the name of the articles are mentioned, they had put the correct description as S.S. Jacket Medicine Tank and S.S. Jacket for Planetary Mixing, for which, in view of the judgment of the *Daya Sugar (supra)*, credit is dismissible.

4. Per contra, learned Authorised Representative for the respondent-department Shri Sanjay Hasija, while supporting the reasoning and rationality of the order passed by the learned Commissioner (Appeals), placed Reliance in the case laws of *Sarveswh Refractories (P) Ltd. 2007 (218) ELT 488 (SC)*, *Newlight Hotels & resorts 2016 (44) STR 258 (Tri-Ahmd)*, *Flextronics Technologies 2014 (314) ELT 664 (Tri-Bang)*, *Mark Auto Inds Ltd 2004 (175) ELT 375 (Tri-Del)* and argued that the declared classification by the manufacturer when accepted by the Central Excise Officer, consumer cannot get classification changed to any other Heading and therefore interference in the order passed by the Commissioner (Appeals) by the CESTAT is uncalled for.

5. In response to such submissions, learned Counsel for the appellant submitted that the judgment of *Sarveswh Refractories (P) Ltd. (supra)* is distinguishable from the facts of the present case and in the decision of *Daya Sugar (supra)* passed by the Hon'ble Allahabad High Court, it has been distinguished in holding that it was immaterial if the supplier of the item had wrongly classified the same

since, the actual classification and the eligibility for CENVAT credit is dependent on the actual usage of goods and therefore CENVAT credit is admissible to the Appellant. In referring to a judicial decision of *Mangala Ispat Jaipur Pvt. Ltd. Vs. Union of India* reported in 2018 (15) GSTL 487 (Raj.), he also argued that judicial discipline in following the judicial precedent would ensure consistency of law and the facts of *Sarveswh Refractories (P) Ltd.* judgment are well distinguished by the Hon'ble Allahabad High Court where acceptance by the Central Excise Officers of the classification made by the manufacturer was stated to be not questionable at the consumers end but in the instant case, it was wrong noting under the Heading of invoice while description of item sold in the body of the invoice meant for putting the description is proper and legal, that goes with the actual usage of goods. I find force in the submissions of learned Counsel for the appellant and in following judicial discipline set in the case of *Daya Sugar and Shree Cement Ltd.*, the following order is passed.

ORDER

6. The appeal is allowed with consequential relief and the order passed by the Commissioner of Central Tax, Central Excise & Service Tax (Appeals), Raigarh *vide* Order-in-Appeal No. MKK/219/RGD APP/2018-19 dated 12.09.2018 is hereby set aside.

(Order pronounced in the open court on 11.03.2022)

**(Dr. Suvendu Kumar Pati)**  
**Member (Judicial)**