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Dear Professional Colleague,

Cenvat credit cannot be denied on inputs used in a process not considered as manufacture

We are sharing with you an important judgement of the Hon'ble **Customs, Excise and Service Tax Appellate Tribunal of Bangalore ("the CESTAT")** in the case of the **CCE Vs. M/s Amar Roto Prints [2013-TIOL-926-CESTAT-BANG]** on following issue:

Issue:

- Whether Cenvat credit can be denied on inputs used in a process not considered as manufacture and excise duty paid on such goods can again be demanded under Section 11D of the Central Excise Act, 1944 (**"the Excise Act"**)?

Facts:

In the instant case **M/s Amar Roto Prints ("the Company" or "the Respondent")** availed Cenvat credit on input used in manufacture of finished goods. Thereafter, the Company cleared such finished goods on payment of duty, partly from PLA and partly by utilizing Cenvat Credit.

Later on, the authorities alleged that the above process undertaken by the Company did not amount to manufacture. Thus the Company has wrongly utilized the Cenvat Credit. Also the Company was not required to pay duty on the finished goods as there was no manufacture. Accordingly, the authorities demanded duty under section 11D of the Excise Act and also Cenvat credit taken on inputs was sought to be denied.

Held:

The Hon'ble CESTAT held that Cenvat credit on inputs used in a process not considered as manufacture by the Department cannot be disallowed by relying on the following judgments wherein it has been held **that the CENVAT credit taken on inputs used in the manufacture of finished goods is not liable to be disallowed on the ground that the process in which the inputs were used did not amount to 'manufacture'**:

- **Ashok Enterprises Vs. CCE** [2008 (221) E.L.T. 586]
- **S.A.I.L. Bansal Service Centre Ltd. Vs. CCE** [2007 (220) E.L.T. 520]
- **Super Forgings and Steels Ltd. Vs. CCE** [2007 (217) E.L.T. 559]
- **Shivali Udyog (I) Ltd. Vs. CCE** [2006 (204) E.L.T. 94]

The Hon'ble CESTAT further held that no duty can be demanded under Section 11D of the Excise Act. The Hon'ble Tribunal observed that Section 11D of the Excise Act can only be

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triggered where excise duty is collected from the buyer but not deposited with the Central Government. The Respondent had paid duty on their finished products. Naturally, the Company collected this duty from their customers. The Department is asking the Company to remit such collections also to the Government under Section 11D of the Excise Act. **Indisputably, the Respondent paid duty on their finished goods and hence there is no question of a second payment of the same duty to the Central Government under Section 11D of the Excise Act.**

Hope the information will assist you in your Professional endeavors. In case of any query/information, please do not hesitate to write back to us.

Thanks & Best Regards.

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