CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH : AHMEDABAD

REGIONAL BENCH - COURT NO. 3

EXCISE Appeal No. 11568 of 2013-SM

[Arising out of Order-in-Original/Appeal No CCEA-SRT-I-SSP-402-403-2012-13-U-S-35A dated 12.03.2013 passed by Commissioner of Central Excise, Customs and Service Tax-SURAT-I]

Messrs Surya Food And Agro Limited .... Appellant
4311, Road No. 4, GIDC, Sachin,
SURAT, GUJARAT-394230

VERSUS

Commissioner of Central Excise & ST, Surat-i .... Respondent
New Building, Opp. Gandhi Baug,
Chowk Bazar, Surat, Gujarat-395001

APPEARANCE :

None for the Appellant
Shri Himanshu P Shrimali, Superintendent (AR) for the Revenue.

CORAM: HON'BLE MR. SOMESH ARORA, MEMBER (JUDICIAL)

DATE OF HEARING/ DECISION: 30.08.2023

FINAL ORDER NO. 11833/2023

SOMESH ARORA :

The matter has been coming on the board at least five times earlier. The matter pertains to year 2013. No adjournment request is on record. Therefore, the matter is taken up for disposal on merits.

2. The issue involved in the case is regarding reversal of Cenvat credit as the same was covered under exemption Notification No.22/2007-CE dated 03.05.2007 which requires inter-alia that Biscuits manufactured and cleared of retail price of less than Rs. 50 were not required to pay any duty. It was the department's case that since in the instant matter, the appellant were claiming exemption which were earlier available to MRP of Rs. 50 and below during the impugned period 01.04.2007 to 03.05.2007, they were required to reverse the credit. A demand show cause notice was issued on 25.02.2008 invoking extended period on the ground of willful suppression of facts etc. with intention to evade payment of duty. The appellant have taken various grounds including no requirement of reversal of credit since no goods were manufactured by them in the impugned period and also for no

interest and invocation of extended period. Penalty on the ground that details were contain in the books of account, needs to be done away with.

3. Learned AR seeks to rely on the order-in-appeal specially Para 4.5 relating to party's appeal to emphasize that exemption having been availed by the party during the period they were manufactured and cleared the goods below MRP of Rs. 50, they were liable to reverse the credit as proposed by the department and pay interest and penalty.

4. From the facts as well as deliberations made by Commissioner (Appeals) in its order that party availed exemption and therefore they are liable to reverse Cenvat credit as has been proposed by the department along with applicable interest, it is viewed that reversal has been correctly ordered. However, in view of settled position that entries were duly reflected in the books audited by the department, it is clear there was no suppression with intention to evade duty and same was not intended to escape from the knowledge of department. This Court is therefore not inclined to uphold the demand by invoking suppression of facts and extended period. The normal period demand and interest are upheld. There will be no penalty. The appeal is partly allowed in the above terms.

(Dictated and pronounced in the open court)

(Somesh Arora)
Member (Judicial)

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