CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.71248 of 2018
With
Excise Cross Objection Application No.70093 of 2019
With
Excise Miscellaneous Application No.70141 of 2022
(on behalf of respondent)

(Arising out of Order-in-Appeal No.MRT/EXCUS/000/APPL/MRT/159/2018-19 dated 20.06.2018 passed by Commissioner (Appeals) Central Goods & Services Tax, Meerut)

Commissioner of Central GST, Meerut **.....Appellant**
(CGST Division-I, Meerut)

VERSUS

M/s Continental India Ltd. **....Respondent**
(NH-58, Roorkee Road, Meerut)

APPEARANCE:

Shri Sandeep Pandey, Authorised Representative for the Revenue
Shri Suyash Agarwal, Advocate for the Respondent

CORAM: HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO.- 70142/2023

DATE OF HEARING : 27 September, 2023
DATE OF DECISION : 27 September, 2023

P.K. CHOUDHARY:

Vide the present Miscellaneous Application Respondent has filed photocopy of Balance sheet for the Financial Year 2011-12 to 2014-15 to be taken on record and considered in the course of hearing. The facts of the case in brief are that the Respondent is a manufacturer of tyres, tubes and flaps. The officers of erstwhile Central Excise, during the course of audit of the records of the Respondent, alleged that the Respondent had made provisions for write off of cenvatable goods in their Balance sheets for the financial year 2011-12, 2012-13, 2013-14

& 2014-15. The Superintendent Central Excise, Meerut issued letter dated 27.01.2016 to the Respondent to provide details to determine the amount of Cenvat to be reversed in terms of Rule 3(5B) of Cenvat Credit Rules, 2004. The Respondent vide letter dated 29.02.2016 submitted that the word write off is no where mentioned in the Balance sheet and only provision for slow moving obsolete spares is mentioned in the notes of other expenses. The value of goods for slow moving store & spare in balance sheet for Financial Year 2011-12, 2012-13, 2013-14 & 2014-15 were Rs.8,32,45,375/- and the amount of duty involved was Rs.99,06,137/-

2. On 28.04.2016 a show cause notice was issued to the Respondent on the premise that Respondent has made provision for full/partial write off in their books of accounts but not reversed an amount equivalent to the cenvat credit which is violation of Rule 3(5B) of Cenvat Credit Rules, 2004. Accordingly, the revenue demanded Rs.99,06,137/- central excise duty under Rule 14 read with proviso to section 11A (1) of the Central Excise Act, along with interest and penalty.

3. In response to show cause notice, the Respondent submitted reply on 22.09.2016 that as per their Company's policy, they provide for the slow moving stores and spare which are lying idle for certain period since past. The provision is not on account of obsolescence since the material is still usable and the same is still there in the inventory of the Respondent's company and is also physically available in the stores of the Company with the sole purpose that they are to be used in or in relation to the manufacture of their final product and that such use is in waiting. The purpose is just to give the true picture of the inventories as far as the amount is concerned. Also, on the face of the Balance sheet as well, the fact is always disclosed that the inventories are net of provision. The inventories are not written off. In the subsequent period, such stores and spares are in fact used and then the provision in respect of the same is reversed. The respondent submits that the inventories are

written off only in cases where the same are discarded and are not available physically in their factory. The Adjudicating Authority vide Order-in-Original No.69/ADC/Meerut2017 dated 31.03.2017 rejected the submission of the Respondent and invoked the extended period of limitation. The Adjudicating Authority observed that the provisions of slow moving/obsolete stores and spares made in their books of accounts for Financial Year 2011-12, 2012-13, 2013-14 & 2014-15 was akin to the provisions of write off fully or partially as per Rule 3(5B) of Cenvat Credit Rules and the Respondent are liable to pay cenvat credit of Rs.99,06,137/- and equivalent penalty along with interest. Commissioner (Appeals) Meerut vide order dated 20.06.2018 allowed the appeal of the assessee, Continental India Ltd., by holding none of the items on which cenvat credit have been taken has been written off and all the goods continued to be party of inventory and only for the book entry certain slow moving goods which were not utilized during a particular year were shown to be the provision for obsolete spare in the balance sheet. Further, the Appellate Authority also noted that balance sheet does not portray that any provision of write off spare has been entered in the books. Appellate Authority also mentioned that audit team has audited the balance sheet in 2013 and nothing adverse has been noticed. The Appellate Authority set aside the Order-in-Original. The Revenue preferred appeal before the Tribunal on the ground that provisions for slow moving store & spare in Balance sheet for Financial Year 2011-12, 2012-13, 2013-14 & 2014-15 is violative of Rule 3(5B) of Cenvat Credit Rules, 2004.

4. The Departmental Representative reiterates the grounds of appeal and submits that the impugned Order-in-Appeal passed by the Commissioner (Appeals) is erroneous, unwarranted and is fit to be set aside. He further prays that the appeal filed by Revenue be allowed and the Order-in-Original be upheld.

5. The learned Advocate appearing on behalf of the Respondent submits that the inventories are written off only in

cases where the same are discarded and are not available physically in their factory.

6. Heard both sides and perused the appeal records.

7. We find that the revenue in the show cause notice as well as order-in-original itself admits that provisions for slow moving store & spare in balance sheet for Financial Year 2011-12, 2012-13, 2013- 14 & 2014-15 is not a case of "write off" but akin to write off. Thus, the proceedings are based on a presumption and hence not sustainable in law. Honble Supreme Court in Union Of India VS IND-Swift Laboratories Ltd. (2011) 4 SCC 635 paragraph 20 has held that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In support of the same we may refer to the decision in Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. reported in (1961) 2 SCR 189 wherein the Court at Para 10 has observed as follows:-

> *"10. …..In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed : it cannot imply anything which is not expressed; it cannot import provisions in the statutes so as to supply any assumed deficiency."*

8. The short issue involved in the present case is whether the Appellants are required to reverse the credit availed on inputs alleged to have been written off in their books of account in accordance with Rule 3(5B) of Cenvat Credit Rules, 2004. Before analyzing the issue it is worth mentioning the relevant Rule 3(5B) of the Cenvat Credit Rules, 2004 as was in force during the relevant time, which reads as follows:-

> *"Rule 3(5B) : If the value of any input or capital goods before being put to use on which CENVAT credit has been taken is written off fully or partially or where any provision to write of fully or partially has been made in the books of account, the manufacturer or service provider is required to pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods."*

9. Having considered the rival contention, we find that the condition precedent under Rule 3(5B) of CCR, 2004 is, if the value of any inputs/goods have been written off fully or partially or where any provision to write off fully has been made in the books of account, in respect of value of any inputs, then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the Cenvat credit taken in respect of the said inputs. We hold that in the facts and circumstances of this case, there being no writing off or removal of inputs under the provisions of Rule 3(5B) of CCR, 2004, the same is not attracted. Accordingly, we dismiss the appeal of Revenue. The Respondent assessee will be entitled to consequential benefit, if any, in accordance with law. Cross Objection and the Miscellaneous Application also stands disposed off.

(Operative part of the order pronounced in open court)

Sd/-
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

LKS