CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

REGIONAL BENCH - COURT No. I

Excise Appeal No.70863 of 2016-Division Bench

(Arising out of Order-in-Original No.05-06/COMMISSIONER/NOIDA-II/2016-17 dated 31/05/2016 passed by Commissioner of Central Excise, Noida-II)

M/s Agrimas Chemicals Ltd. .....Appellant

(A-73, Industrial Area, Sikandrabad, Bulandshahar, U.P.-203205)

VERSUS

Commissioner of Central Excise, Noida-II ....Respondent

(3rd Floor, Knowledge Part-III, Greater Noida, U.P.)

APPEARANCE:

Absent on Call for the Appellant
Shri Sandeep Kumar Singh, Authorised Representative for the Respondent

CORAM:

HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.- 71137 / 2019

Date of Hearing : 19 June, 2019
Date of Decision : 19 June, 2019

PER: ARCHANA WADHWA

On matter being called, nobody appeared. Accordingly we have gone through the impugned order and have heard learned A.R. appearing for the Revenue.

2. It is seen that the appellant is engaged in the manufacture of Pesticides and Bio-Extracts falling under Chapter 38 of the Central Excise Act. They were also availing the Cenvat credit of duty paid on various inputs and input services. Their head office

was engaged in trading of the goods which is an exempted service and was availing credit of the common input services.

3. According to Revenue, as the appellant was availing Cenvat credit of tax paid on various common input services, utilized for dutiable goods as also for trading of goods they were required to pay amount of 5/6% of the value of the traded goods in terms of the provisions of Rule 6(3) of the Cenvat Credit Rules, 2004. Accordingly based upon the audit objection, they were issued a show cause notice for confirmation of demand on the said ground.

4. During the adjudication, appellant took a categorical stand that as the trading of the goods is being done by their head office located in Delhi through various depots and the credit was availed by the head office, they have reversed the proportionate credit of Rs.19,31,468/- alongwith interest of Rs.6,98,314/-. As such the requirement of payment of any amount in terms of the provisions of Rule 6(3) cannot be determined against them.

5. The Adjudicating Authority, however observed that though the head office has reversed the credit availed by them on common input services but the same was legally required to be reversed at the time of transfer of the credit to the noticee's factory. As such, he observed that the reversal made by the noticees at the head office will not satisfy their legal liability of reversing Rule 6(3) of the Central Excise Rules, 2004. Accordingly, he confirmed the demand of Rs.66,67,431/- lakhs approximately and of Rs.9,19,502/- covered by the two show cause notices issued to the appellant, alongwith confirmation of interest. He, further imposed penalty of Rs.37,93,467/- on the appellant under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC (1)(b) of the Central Excise Act, 1944. The said order of the Commissioner is before us.

6. We note that the Adjudicating Authority is not disputing the fact of reversal of Cenvat credit availed on common input

services by the head office. He is also not doubting the correctness of the said reversal. The said reversal has been made by the head office alongwith payment of interest of Rs.6,98,314/- lakhs. The effect of said reversal is as if no credit was availed by the appellant in respect of the common services which were utilized for trading of the goods. In such a scenario, further demand of a particular percentage of the value of the traded goods in terms of Rule 6(3) is neither in accordance with the provisions of Cenvat Credit Rules nor with the settled principle of law. It stands held by various decisions of the judicial and quasi-judicial authorities that in case of reversal of proportionate credit attributable to the exempted goods/services, further demand in terms of Rule 6(3) is unsustainable. As such, we find no reasons to uphold the impugned order. The same is accordingly set aside and appeal allowed with consequential relief to the appellant.

(Dictated and pronounced in open court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Sd/-
(Anil G. Shakkarwar)
Member (Technical)

Lks