CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No.70943 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APP-1768-17-18 dated 28/02/2018 passed by Commissioner (Appeals), Central Goods & Service Tax, Noida)

Agrimas Chemicals Limited .....**Appellant**

(A-73, Industrial Area Sikandrabad District

Bulandshahar Uttar Pradesh-203205)

VERSUS

The Assistant Commissioner

Central Goods & Service Tax

Division Bulandshahar .....**Respondent**

(Plot No.3, 3rd Floor,Wegmans Business Park,

KP-III Greater Noida-201308 Uttar Pradesh)

APPEARANCE:

Shri Naveen Agarwal, Manager Accounts for Appellant
Shri Gyanendra Kumar Tripathi, Authorized Representative for Respondent

CORAM :
Hon'ble Mr. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO.71964/2019

DATE OF HEARING : 02 December, 2019
DATE OF DECISION : 02 December, 2019

PER : ANIL G. SHAKKARWAR

After hearing both the sides duly represented by Shri Naveen Agarwal employee of the Appellant and learned A.R. Shri Gyanendra Kumar Tripathi on behalf of the Revenue, I note that the appellants were issued with a show cause notice on two grounds. There was a proposal in the show cause notice to reverse the Cenvat Credit of Rs.66,686/- availed by the appellant on packing material which was not used for three years and was still lying in the factory unused. The other issue in the said show cause notice was that appellant had issued debit notes amounting to around Rs.1.7 crore to the suppliers of inputs to them and Cenvat Credit involved in the said amount of debit notes was around Rs.21 Lakhs and the same was proposed to be recovered from the appellant. The Original Authority in Order-in-Original dated 15.03.2017 dropped both the demands. The Original Authority has held that since the packing material was not written off, the assessee was entitled for Cenvat Credit on the same. In respect of demand of Cenvat Credit of around Rs.21 Lakhs on account of issue of debit notes, the Original Authority has held that the only requirement in Rule 3 of Cenvat Credit Rules is that the duty should have been paid on the inputs or capital goods and the inputs should have been received by the manufacturer and therefore he has allowed the said Cenvat Credit and dropped the demand. Aggrieved by the same Revenue preferred appeal before Commissioner (Appeals). Commissioner (Appeals) set aside the Order-in-Original dated 15.03.2017. Aggrieved by the said order appellant is before this Tribunal.

2. After hearing both the sides and on perusal of records, I hold that the appellants were entitled for Cenvat Credit of Rs.66,686/- in respect of packing material lying in the factory since the packing material has not been removed from the factory nor it is written off in the Books of Account. Further the findings of Commissioner (Appeals) in respect of Cenvat Credit of Rs.21 lakhs suggest that he accepted the contention of Revenue that the Original Authority without segregating the information in respect of denial of Cenvat Credit required to be denied on inputs

short received or returned the Original Authority had dropped the entire demand. In this regard, I hold that it was responsibility of Revenue before issuance of show cause notice to scrutinize the material in such a manner that they did not raise any demand on account of rate revision in respect of inputs and they should have raised demand only in respect of inputs not received or returned. The onus was on Revenue to justify why the demand was raised. Revenue has not stated the quantities and Cenvat Credit involved in respect of inputs which were not received or returned. Therefore, the said demand is not sustainable. I, therefore, set aside the impugned order and dropped the proceedings.

3. In above manner appeal is allowed.

(Dictated and Pronounced in open Court)

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

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