CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 2117 of 2010

(Arising out of Order-in-Appeal No. 183/2010-CE dt. 14/07/2010 passed by Commissioner Of Central Excise(Appeals-I), Bangalore)

Power Plastech Private Limited,
No.513, 10th Main, 4th Phase,
Peenya Industrial Area,
Bangalore 560 058.

Appellant(s)

VERSUS

Commissioner of Central Excise
Bangalore-II Commissionerate
PB No.5400, Queens Road
Bangalore 560 001.

Respondent(s)

APPEARANCE:
Mr. N. Anand, Advocate for the appellant.
Mr. H. Jayathirtha, Superintendent(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20618 / 2023

Date of Hearing: 23/06/2023
Date of Decision: 23/06/2023

Per : DR. D.M.MISRA

This appeal is filed against the Order-in-Appeal No.183/2010-CE dt. 14/07/2010 passed by the Commissioner of Central Excise (Appeals-I), Bangalore.

2. Briefly stated the facts of the case are that the appellant, pursuant to the direction of the Hon'ble Bench vide Stay Order No.833/2009 dt. 20/05/2009 in appeal No.E811/2008, deposited Rs.3,00,000/- by debiting their CENVAT credit account. Revenue raised objection to such debits stating that in view of para 2(iv) of the Notification No.8/2003-CE dt. 01/03/2003, such debit is irregular and consequently issued demand notice for recovery of the same with interest and penalty. On adjudication, the demand was confirmed with interest and penalty. Aggrieved by the said order, they filed appeal before the Commissioner(Appeals) who also upheld the Order-in-Original. Hence the present appeal.

3. At the outset, learned counsel for the appellant submits that the appeal No.E/811/2008 has already been decided by this Tribunal in favour of the appellant and the amount Rs.3,00,000/- deposited during the pendency of the appeal has been refunded to the appellant. It is his contention that the present demand cannot be sustained in view of the Larger Bench decision in the case of Birla Yamaha Ltd. Vs. CCE [1996(83) ELT 396 (Tri. LB)] and also the Circular of CESTAT dt. 28/08/2014.

4. Learned AR for the Revenue reiterates the findings of the learned Commissioner(Appeals).

5. Heard both sides and perused the records.

6. We find that the sole ground on which the issue of utlisation of CENVAT credit for predeposit in compliance with Section 35F of Central Excise Act, 1944 is no more *res integra* in view of the principles laid down by the Larger Bench in Birla Yamaha Ltd.'s case (supra). The appellants are at liberty to deposit the amount by debiting the CENVAT credit account in pursuing their appeal before this forum. In the result, the impugned order is set aside and the appeal is allowed.

(Dictated and pronounced in open court)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...