CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL BANGALORE

REGIONAL BENCH - COURT NO. 2

Central Excise Appeal No. 21832 of 2015

(Arising out of Order-in-Original No. 12/HEB/COMMR/B1/2015 dated 08.05.2015 passed by the Commissioner of Central Excise, Bangalore-I Commissionerate, Bengaluru.)

M/s. Bostik India Pvt. Ltd.,
124/1-124/2a, Kachanayakanhalli,
Anekal Taluk,
Bommsandra Industrial Area,
Bangalore – 562 106. ……….**Appellant(s)**

Versus

Commissioner of Central Excise
Bangalore - I. ………..**Respondent(s)**

Appearance:
Mr. Basavaraja Nishani and Mr. Saurabh Bhutra, Consultants for the Appellant.
Mr. Neeraj Kumar, Superintendent (AR) for the Respondent.

Coram:

Hon'ble Mr. P.A. Augustian, Member (Judicial)
Hon'ble Mr. Pullela Nageswara Rao, Member (Technical)

Final Order No. 20975 /2025

Date of Hearing: 03.01.2025

Date of Decision: 02.07.2025

Per : P.A. Augustian

The issue in the present appeal is regarding demand against wrong availment of CENVAT credit on cancelled invoice and imposition of penalty.

2. The Appellant is manufacturing Hydro cyclic compounds and other goods for industrial use and availing CENVAT credit on input service under the provisions of CENVAT Credit Rules, 2004. On verification of the record, it is observed that from April 2011 to November 2012, Appellant had availed CENVAT credit on cancelled invoices. Since the

Appellant has not followed the prescribed procedure under Section 11B of the Central Excise Act, 1994 on such cancelled invoices and availed such CENVAT credit, proceedings were initiated alleging that it is in violation of the CENVAT Credit Rules, 2004 and the appellant is liable for recovery of cenvat credit irregularly availed on cancelled invoices for an amount of Rs. 50,31,141/- along with interest and penalty. In response to the above objection, the Appellant submitted that after paying of its liabilities for the month, they have examined the invoices cancelled in the last month and the excise duty relatable to the said cancelled invoices is taken back as CENVAT credit which has been wrongly debited in the CENVAT balance. Appellant have paid all such duties through CENVAT credit except educational cess and secondary higher education cess and no duties has been paid through PLA or in cash as the Appellant's CENVAT balance was always higher than that of the excise duty payable during the disputed period. However, Adjudication authority as per the impugned order, disallowed the CENVAT credit with a finding that it is irregularly availed by the Appellant and also confirmed demand with interest and imposed penalty. Aggrieved by said order, present appeal is filed.

3. When the appeal came up for hearing, the Learned Consultant for the Appellant fairly admits that there was an omission on the part of the Appellant, and it is only due to error in ERP system. The system computes excise duty liability on the basis of invoices raised in a particular month without taking into consideration the invoices though generated have been subsequently cancelled and hence to meet the compliance requirement, excise duty is paid even on the cancelled invoices.

4. The Learned Consultant also draws our attention to the Central Excise Manual whereas as per Chapter 4 related to "invoice system", wherein it is stated that in case of computer-generated invoice, the serial number may be allowed to be generated and printed by computer at the time of preparation of invoice ONLY IF the software is such that computer automatically generates the number and same number cannot be generated more than once. For this purpose, the Central Excise Officers may check the system/software from time to time in

advance by the Superintendent or Inspector of the jurisdictional Range Office. The assessee will also maintain a record of such outward and inward movements, indicating date and time. Weighment should be done at the weighbridge nearest to the factory. The challan numbers shall be quoted on invoice. The Superintendent or inspector of the jurisdictional Range office will verify the challans and weighment slips randomly, at least once every month. If nothing adverse comes to notice, the permission may be renewed. Assessee should, however, be advised to install their own weighbridge inside the factory.

5. Thus, the system also casts a responsibility on the Department also to verify the error or omission committed on the part of Appellant. The Learned Consultant further submits that the issue is no more res integra and it is settled as per the decision of this Tribunal in the matter of **M/s Motorola India Pvt. Ltd. Vs. Commissioner of C.Ex., Bangalore – III (2006 (193) E.L.T. 468 (Tri. – Bang.).** Learned Consultant further submits that it is a revenue neutral situation and there is no loss of Revenue, since the Appellant has only taken credit of the amount which was in any case admittedly not payable. The Appellant also relied on the judgment of the Hon'ble Supreme Court in the matter of **CC. Ex., Vs. M/s Narayan Polyplast -2005 (179) E.L.T 20 (SC)** wherein it is held that according to Revenue, MODVAT was wrongly availed which is the exact amount paid by the assessee by way of excise duty. The Court accepted the plea of Revenue neutrality and dismissed the appeal of the Department. Further as regards revenue neutrality, the reliance of the Adjudication authority on the decision of this Tribunal in the matter of **M/s. Jay Yushin,** Learned Consultant for the appellant submits that Ld. Commissioner has mis-interpreted the judgement of the Hon'ble Tribunal. The Hon'ble Tribunal in the instant case, simply held that revenue neutrality is to be applied having regard to facts of each case and held that " *Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence*". Therefore, the Tribunal has expressly held that said judgment is not in case of "*mere deviation or failure to observe all the conditions".*

6. As regards the finding of the Adjudication authority that the credit has been availed on the strength of cancelled invoices, Learned Consultant submits that such finding is prima facie unsustainable. The Appellant's case is not one of availing credit on the strength of cancelled invoice but only a case of reversal of the debit entry vide which excess amount was undisputedly paid earlier as tax. Revenue has attempted to make it is a case of availing credit on a strength of unprescribed documents when the present case is only one of the reversal of excess amount paid as duty. Learned Consultant also relied on the judgment of the Hon'ble Supreme Court in the matter of **Commissioner of Central Ex. & Cus., Surat – III Vs. M/s Creative Enterprises (2009 (235) E.L.T. 785 (Guj.)) and C.C.E., Bangalore-V. Vs. M/s Vishal Precision Steels Tubes & Strips Pvt. Ltd., (2017 (349) E.L.T. 686 (Kar.))**

7. Learned Consultant further submits that even assuming without admitting that the revenue is correct in holding that *"Even debiting duty in CENVAT Registers / reflecting debit particulars or showing in duty payment details in ER-1 amounts to payment of duty. Hence, the assessee is not eligible to take suo-moto credit but to apply for refund of Duty"*. It is submitted that once an amount has been paid in lieu of tax, the amount availed as credit cannot be denied on the ground that the said tax was not payable. Reliance is placed upon the following cases:

i. **Comm. of Central Ex. & Cus., Surat-III [2009 (235) ELT 785 (Guj.)] approved by Supreme Court in Commissioner Vs. Creative Enterprises [2009 (243) ELT A120 (SC)]**

ii. **CCE, Bangalore-V Vs. Vishal Precision Steel Tubes & Strips Pvt. Ltd. [2017 (349) ELT 686 (Kar.)]**

8. Learned Consultant further submits that substantial benefit should not be denied in the event of procedural lapse as settled by the following judgments:-

(i) Mangalore Chemicals And Fertilizers Ltd. Vs. Dy. Commissioner [1991 (55) ELT 437 (SC)]

(ii) Formica India Division Vs. Collector of Central Excise [1995 (77) E.L.T. 511 (S.C.)]

9. The Learned Consultant further submits that the demand confirmed by the Adjudication authority by invoking the extended period of limitation is also unsustainable. The disputed period was from April 2011 to November 2012 and show cause notice issued only on 14.10.2013.

10. The Learned AR reiterated the finding in the impugned order.

11. Heard both sides and perused the records.

12. We find that it is an admitted fact that there was an omission on the part of the Appellant in crediting the CENVAT credit on a cancelled invoice. However, considering it as a clerical mistake, during audit they have reversed the entire amount. Facts being so and the evidence adduced by the Appellant, they were holding sufficient CENVAT credit in their books of accounts. In the absence of any willful negligence or suppression of facts for evasion of duty, invoking extended period of limitation is prima facie unsustainable. As regarding the issue on merit, we find that the issue regarding such mistake/omission was brought to the notice of the Appellant, and they have paid the entire amount. Following the ratio of the decision of this Tribunal and also considering the revenue neutrality as urged by the Learned Consultant for the Appellant, it was not a fit case for confirming the demand under the provisions of Rule 14 of the CENVAT Credit Rules, 2004 r/w proviso to Section 11A(10) of Central Excise Act, 1994.

13. Accordingly, the appeal is allowed with consequential relief, if any, in accordance with law.

(Order pronounced in Open Court on 02.07.2025)

(P.A.Augustian)
Member (Judicial)

(Pullela Nageswara Rao)
Member (Technical)

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