CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL CHANDIGARH

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 61965 of 2018

[Arising out of Order-in-Original No. CHD-GST-CEX-COM-06-23-2018 dated 29.08.2018 passed by the Commissioner of Central Excise, Chandigarh-II]

M/s Ruchi Infortech Systems **......Appellant**
Lane No. 3B, SIDCO Industrial Complex,
Bari Brahamana, Jammu & Kashmir-141003

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh **......Respondent**
Central Revenue Building, Plot No. 19,
Sector 17C, Chandigarh 160017

APPEARANCE:

Ms. Shreya Khunteta, Advocate for the Appellant

Sh. Raman Mittal, Authorized Representative for the Respondent

CORAM:

HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 60578/2024

DATE OF HEARING: 11.10.2024
DATE OF DECISION: 11.10.2024

PER: S. S. GARG

The present appeal is directed against the impugned order dated 29.08.2018 passed by the Commissioner of Central Excise, Chandigarh whereby the Commissioner has confirmed the penalty of Rs.2,33,250/- under Rule 26(2) of the Central Excise Rules, 2002.

2. Briefly the facts of the present case are that the appellant is engaged in manufacture of Menthol Flake, Menthol Solution falling under Chapter Heading 2906 and De-Mentholized Oil falling under Chapter Heading 3301 of the Schedule of Central Excise Tariff Act, 1985 ("Excise Tariff Act"). Intelligence was received by the department that M/s Neeru Enterprises ("Principal Appellant") was availing CENVAT credit on inputs, namely Menthol Flakes and Dememholiséd Oil (DMO) on the basis of fake CENVAT invoices issued by the units situated at Jammu & Kashmir who were availing exemption under Notification Nos. 56 & 57/2002 dated 14.11.2002 ('Area based Exemption Notification') and that the said CENVAT Credit was utilized towards payment of duty on their final products for domestic clearances as well as on export of goods under rebate claim. Thus, investigations were initiated by the officers of Central Excise of Meerut-II Commissionerate against the Principal Appellant. During the said investigation, summon were issued to the proprietor of the Principal Appellant and his statement was recorded. Also, list of suppliers from whom raw materials were procured for manufacturing of final products was sought from Principal Appellant. Appellant was one such supplier based in J&K who was supplying Menthol and Menthol Solutions ("Impugned goods") to Principal Appellant. The appellant was availing the benefit of refund of central excise duty paid from PLA account in terms of the Area-based Exemption Notification. During the investigation proceedings, department observed that since inception the Menthol units situated in Uttar Pradesh had the facilities to manufacture menthol solutions, DMO etc.

by procuring the raw material crude menthol oil from farmers located in Uttar Pradesh. However, since the said crude menthol oil was purchased from small distillation units, no excise duty was payable and accordingly no CENVAT credit was available. Accordingly, upon the issuance of Area-based Exemption Notifications, the manufacturers of Menthol products devised a scheme to avail CENVAT credit on crude menthol oil by routing the same through J&K. Accordingly. manufacturers set up units in J&K, wherein crude oil purchased from farmers located in UP was used as raw material for manufacturing of Menthol, DMO etc. which were subsequently cleared on payment of excise duty, of which the buyers (Principal Appellant in this case) availed credit, which was subsequently utilized for payment of excise duty on domestic clearances.

3. In the light of the above, enquires and investigations were conducted at J&K based units, wherein it was revealed that crude menthol oil was purchased from various farmers through suppliers cum commission agents. It was further alleged that the Principal Appellant in collusion with the appellant and other J&K based manufacturers were availing fraudulent CENVAT credit on the basis fake invoices without actual receipt of impugned goods for further manufacture of final products. On these allegations, Show Cause Notice dated 05.01.2010 was issued to the Principal Appellant proposing to deny CENVAT credit on the strength of fake invoices issued by J&K based manufacturers as no impugned goods were manufactured by J&K based manufacturers. Further, penalty was proposed to be levied on the Appellant under Rule 26 of the Rules on

the ground that the Appellant never had adequate infrastructure nor produced/ received any excisable goods during the relevant period and had colluded with Principal Appellant in order to pass on fraudulent credit to them and knowingly and willfully fabricated the production/ procurement and clearance records and returns without actual production/procurement and clearance of excisable goods during the relevant period and without actual transportation of the impugned goods. After following the due process, the Show Cause Notice was confirmed vide the impugned order i.e. confirmed the demand and penalty proposed in the Show Cause Notice. Aggrieved by the penalty confirmed against the appellant, the appellant has filed the present appeal.

4. Heard both the parties and perused the records of the case.

5. Learned Counsel for the appellant submits that the impugned order is not sustainable in law because the same has been passed without properly appreciating the facts and the law. She further submits that the entire proceedings initiated against the appellant were based on investigations carried out by the officers of Central Excise, Meerut-II Commissionerate against the Principal Appellant wherein it was alleged that the credit was wrongly availed by the Principal Appellant as there was no actual supply of impugned goods from the appellant and other J&K manufacturers as the same were not, in fact, manufactured by the appellant and other J&K manufacturers. She further submits that the entire proceedings initiated against the Principal Appellant has been set aside by this

Tribunal by virtue of Final Order No.60368-60373/2019 dated 02.04.2019, reported as **Neeru Enterprises Vs CCE, Chandigarh-II-2019 (4) TMI 432-CESTAT Chandigarh**. In the said order, it has been held that Principal Appellant was receiving Menthol, Menthol flakes and De-Mentholised Oil in its premises as raw materials from its suppliers i.e., J&K manufacturers and was consequentially manufacturing the finished goods. Therefore, it has been held that Principal Appellant was rightly availing the CENVAT Credit.

6. Learned Counsel for the appellant further submits that when the entire demand stands demolished in the present case and thus, the demand upheld vide the impugned order are liable to be set aside on this ground. She also submits that in the appellant's own case in M/s Ruchi Infotek Systems VS CCE, J&K- 2019 (3) TMI 1493-CESTAT Chandigarh, this Tribunal passed the order in favour of the Appellant wherein the Tribunal categorically held that sufficient records were shown by the Appellant to prove that impugned goods were manufactured by the Appellant after procurement of raw material from suppliers. She also submits that in respect of the suppliers of the appellant arising out of the similar investigation is already decided by the Tribunal by setting aside the penalty imposed on such suppliers by holding that the crude menthol oil was actually supplied to J&K based manufacturers who further manufactured the impugned goods and supplied it to its buyer. In favour of this, she relied upon the following decisions:

- **Sangam Aromatics, Narbada Industries, Maa Durga Industries, Sanjay Kumar Gupta, Shakun**

Kumar Gupta, Runu Gupta, Vineet Gupta, M/S Rapti Commission Agency, M/S Aar Bee Industries Versus CCE & ST- Chandigarh, Jammu & Kashmir, 2019 (5) TMI 1339 - CESTAT Chandigarh

- **M/S Arora Aromatics Vs CCE, Meerut- 2017 (12) TMI 1430-CESTAT Allahabad.**

7. Learned Counsel for the appellant submits that while passing the impugned order, the Adjudicating Authority has not considered the documentary evidence produced and the impugned order was passed based on presumptions. She further submits that the demand of penalty as confirmed in the impugned order is liable to be set aside because the demand against the Principal Appellant has already been dropped.

8. On the other hand, learned Authorized Representative for the Department reiterates the findings of the impugned order.

9. After considering the submissions of both the parties and perusal of the material on record, we find that this issue is no more *res integra* and the matter has attained finality by the decision of the Tribunal in the case of Principal Appellant and suppliers of the appellant in the case of **M/s Neeru Enterprises** cited supra wherein it has been held that Principal Appellant was receiving Menthol, Menthol Flakes and De-Mentholized Oil in its premises as raw materials from it suppliers i.e. J&K manufacturers and was consequentially manufacturing the finished goods and has rightly availed the CENVAT credit. Further, we find that the demand for

penalty would not arise if the demand against the Principal Appellant is not sustainable and in the present case, the demand against the Principal Appellant is itself set aside by this Tribunal holding that the impugned goods were actually received by the Principal Appellant supplied by the appellant and other J&K manufacturers. Further, we find that the penalty under Rule 26(2) has been imposed whereas during the relevant period, the said Rule did not exist and the same came into existence w.e.f. 11.05.2007.

10. In view of our discussion above, we find that once the penalty against the main appellant has been dropped, the penalty against the present appellant is not sustainable and moreover, the said Rule 26(2) was not in existence during the relevant period. In view of this, the impugned order is set aside by allowing the appeal of the appellant.

(Operative part of the order pronounced in the open court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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