CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

REGIONAL BENCH AT CHANDIGARH
E-HEARING
SINGLE MEMBER BENCH

Appeal No. E/60437/2020
(Arising out OIA No. CHD-EXCUS-001-APP-58-2020-21 dt.15.9.2020 passed by the Commissioner (Appeals), CGST, Central Revenue Building, Plot NO.19, Sector17C, Chandigarh**)**

M/s. Varpar International Pvt.Ltd. **Appellant**
(Miasa Tibba, Majholi, Solan. Himchal Pradesh)

Vs.
Commissioner of CGST, Shimla **Respondent**
(Ground & 1st Floor, Commercial & Parking Complex, Chhota Shimla)

Present for the Appellant: Shri Om Prakash, Advocate
Present for the Respondent:Shri Vijay Gupta, AR

Date of hearing: 19.03.2021
Date of decision:19.03.2021

FINAL ORDER NO.60793/2021

Per: Ashok Jindal

The appellant is in appeal against the impugned order wherein the demand under Rule 6(3) of Cenvat Credit Rules, 2004 has been confirmed on account of non reversal of Cenvat credit on exempted goods cleared by them without maintaining separate account of inputs and input services used in manufacturing of exempted as well as dutiable goods.

2. The facts of the case are that the appellant is engaged in the manufacture of steel furniture. On scrutiny of records by audit for the period November, 2015 to March, 2017, it was observed that the appellant was clearing their finished goods on payment of central excise duty as well as without payment of duty under Notification No.10/1997 dt.1.3.1997, amended. It was also found that the appellant was using common inputs or input service for

manufacturer of dutiable goods and exempted goods without maintaining separate records of inputs and input service used for manufacture of dutiable as well as exempted goods without complying the provisions of Rule 6 of Cenvat Credit Rules,2004. Therefore, it was alleged that by issuance of show cause notice dated 23.10.2018 by invoking the extended period of limitation for demand of duty under Rule 6 (3) of Cenvat Credit Rules, 2004 for the period November, 2015 to March, 2017. The matter was adjudicated and demand was confirmed against the appellant. Against this said order, the appellant is before me.

3. Ld. Counsel for the appellant submits that the appellant is manufacturing dutiable goods and some clearances have been made by the appellant without payment of duty under Notification No.10/1997 dt.1.3.1997, amended for specified customers who qualify to buy impugned goods without payment of duty by way of above notification. Therefore, as the appellant is manufacturing dutiable goods and not exempted goods and not required to maintain separate accounts for inputs and input service used for manufacture of dutiable goods. Accordingly, no demand is sustainable against the appellant.

4. Ld. Counsel further submits that as the appellant filing their ER-1 return (monthly) showing clearance of the said goods, therefore, the show cause notice is barred by limitation.

5. On the other hand, Ld.AR submits that it is fact on record that the appellant has cleared the goods without payment of duty, therefore, they are required to maintain separate accounts for inputs/input services otherwise they are required to reverse Cenvat

credit taken on inputs/input services used for manufacture of exempted goods failing which they are required to pay an amount of 6% or 7% of the value of goods cleared without payment of duty. He further submits that if audit would not have been conducted, the evasion of duty would have remained undetected. Therefore, the extended period of limitation has rightly been invoked. He also relied upon the decision of Hon'ble Apex Court in the case of Narmada Valley Fertilizers-2020 (371) ELT 3 (SC).

6. Heard the parties and considered the submissions.

7. It is fact on record that the appellant is filing ER-1 return regularly showing clearance of impugned goods without payment of duty and without reversal of credit and the show cause notice was issued by invoking the extended period of limitation. Therefore, the extended period of limitation is not invokable in the facts and circumstances of the case.

8. On merits, it is a case that the appellant is manufacturing dutiable goods not exempted goods. Some clearances were exempted from payment of duty by way of Notification No.10/1997 dt.1.3.1997, (amended) to specified buyer of the goods if those buyers fulfil condition of the said notification. Buying goods from the appellant under Notification No.10/1997 dt.1.3.1997 without payment of duty does not change the character of the goods as exempted goods. In that circumstance, I hold that Rule 6(3) of Cenvat Credit Rules are not applicable to the facts of the present case.

9. Ld. AR relied upon the decision of Hon'ble Apex Court in the case of Narmada Valley Fertilizers (supra), is not applicable to the facts of the case in hand. In fact, the assessee was manufacturing

fertilizers which were wholly exempted from payment of duty. Therefore, the said case has no relevance to the facts of the present case.

10. In that circumstance, the impugned order deserves no merit and accordingly, the same is set aside. In the result, the appeal is allowed with consequential relief.

(dictated and pronounced in the open court)

(ASHOK JINDAL)
MEMBER (JUDICIAL)

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