IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No. 40455 of 2020

(Arising out of Order-in-Appeal No. MAD-CEX-000-APP-79-20 dated 29.06.2020 passed by the Commissioner of G.S.T. and Central Excise (Appeals), Coimbatore, Circuit Office, Madurai, 4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002)

M/s. Dharani Wind Energy (P) Ltd., Textile Division : Appellant
Trichy Main Road, Vadamadurai (P.O.),
Dindigul – 624 802

VERSUS

The Commissioner of G.S.T. and Central Excise, : Respondent
Madurai Commissionerate,
4, Lal Bahadur Shashtri Marg, C.R. Buildings, Madurai – 625 002

APPEARANCE:

Ms. D. Naveena, Advocate for the Appellant

Ms. K. Komathi, Authorized Representative (A.R.) for the Respondent

CORAM:

HON'BLE MS. SULEKHA BEEVI C.S., MEMBER (JUDICIAL)

FINAL ORDER NO. 41486 / 2021

DATE OF HEARING: 28.04.2021

DATE OF DECISION: **07.06.2021**

Order :

Brief facts of the case are that the appellants had purchased another unit (M/s. Vishwabharathi Textiles Private Limited, Unit-II) along with plant and machinery on 05.06.2006. The machineries in the unit were originally purchased by M/s. Vishwabharathi Textiles Pvt. Ltd., Unit-II durng the years 1993, 1994 and 1995 and they had taken MODVAT credit on these machineries. After considerable usage, the appellants sold some of these capital goods to various parties under invoices during the year September 2006 to September 2007. They did not reverse the CENVAT Credit on these capital goods.

2. The appellants were issued Show Cause Notice No. 02/2008 dated 29.01.2008 alleging that they are liable to pay an amount equal to the credit availed in respect of the said capital goods in terms of Rule 3 (5) of the CENVAT Credit Rules, 2004. After due process of law, the Original Authority vide Order-in-Original No. 05/2008 (CE) dated 30.06.2008 confirmed the demand of the entire credit of Rs. 36,62,530/- that was initially taken by M/s. Vishwabharathi Textiles Pvt. Ltd., Unit-II; equal penalty was also imposed. Against such Order, the appellant filed an appeal before the Commissioner (Appeals) and vide Order-in-Appeal No. 57/2010 dated 26.02.2010, the Commissioner (Appeals) remanded the matter to the Adjudicating Authority to re-quantify the liability, directing that the demand has to be calculated on the depreciated value of the capital goods. Against such order, the appellant as well as the Department filed appeal before the Tribunal at Chennai and vide Final Order Nos. 40024 to 40025 of 2018 dated 04.01.2018, the Order passed by the Commissioner (Appeals) was upheld.

3.1 As per the remand order of Commissioner (Appeals), as upheld by the Tribunal, the matter was taken up by the Original Authority. In such *de novo* proceedings, the Original Authority considered whether the straight line method or the written down value method has to be adopted for calculating the depreciation. The appellant vide their reply dated 25.09.2018 contended that to determine the depreciated value, an abatement of 2.5% every quarter has to be allowed and the straight line method has to be adopted.

3.2 The Original Authority vide Order-in-Original No. MDU-CE-JC-23-2018 (Denova) dated 20.12.2018 confirmed the demand of Rs. 15,76,499/- along with interest. He estimated the rate of depreciation to be 2.5% every quarter, but, however, adopted the written down value method for calculating the depreciation. Aggrieved by the said Order, the appellant preferred an appeal before the Commissioner (Appeals), who vide Order impugned herein again remanded the matter back for re-computation holding that depreciation at 2.5% every quarter is wrong and that there should be a maximum cap of 70% of the depreciation value. As for the extended period, the demand for the period from September 2006 to December 2006 was set aside. Aggrieved by such Order, the appellant is now before the Tribunal.

4.1 On behalf of the appellant, Learned Counsel Ms. D. Naveena appeared and argued the matter. She submitted that the dispute before the Commissioner (Appeals) was in respect of the method of depreciation that has to be adopted and on the other hand, the impugned order has traversed beyond the grounds raised. The appellant's contention was to apply 2.5% per quarter which was accepted by the Original Authority. The appeal was filed not on the rate adopted, but for applying the written down value method instead of the straight line method. The Commissioner (Appeals) held that the rate of 2.5% adopted is wrong and also gave direction as to the maximum value as to which the depreciation can be allowed. That the Commissioner (Appeals) has thus gone beyond the scope of the appeal grounds so as to put the appellant in an adverse situation. She relied upon the decision of the Hon'ble High Court of Madras in *M/s. Servo Packaging Ltd. v. CESTAT, Chennai* reported in *2016 (340) E.L.T. 6 (Mad.)* to argue that an Appellate Authority cannot go beyond the scope of appeal and pass an order adverse to the interests of the appellant so as to put it in a worse situation than the order under challenge in its own appeal.

4.2 With regard to the method to be adopted to calculate depreciation, she explained the straight line method and the written down value method by illustration and submitted that if the straight line method is adopted, after a period of time, the value of the asset would be 'Nil'. That in the case of written down method, this is not so.

4.3 She further stated that in Rule 3 (5) of the CENVAT Credit Rules, 2004, an amendment was brought forth vide Notification No. 06/2010-C.E.(N.T.) dated 27.02.2010 wherein it has been stated that for calculating the depreciation of capital goods for reversing the credit, the straight line method has to be adopted. That though the period involved in the present case is prior to 27.02.2010, the Tribunal in several decisions has held that the straight line method has to be adopted for the period prior to 27.02.2010 also. She relied upon the decision in the cases of *M/s. Siddharth Polysacks Pvt. Ltd. v. Commr. of C.Ex. & Service Tax, Jaipur-I* reported in *2015 (315) E.L.T. 419 (Tri. – Del.)* and *M/s. Navin Fluorince International Ltd. v. Commissioner of Central Excise and Service Tax, Indore* reported in *2017-TIOL-4071-CESTAT-DEL.*

4.4 She prayed that the demand may be determined by calculating the depreciation after adopting the straight line method.

5. Learned Authorized Representative Ms. K. Komathi appearing for the respondent supported the findings in the impugned order.

6. Heard both sides.

7. On perusal of the impugned order, the operative portion of the order reads as under:

> *"The Order-in-Original No. MDU-CE-JC-23-18 dated 20.02.2018 passed by the Joint Commissioner of*

> *GST & Central Excise is set aside and the matter is remanded back to the Original Adjudication Authority for the limited purpose of passing orders after re-quantification of the Credit to be reversed as set out in Para 6(g) & 6(h) and the recomputed amount to be reversed/paid should not exceed the amount demanded in the notice for the period January, 2007 to September, 2007. The demand for the period upto December, 2006 is set aside as time barred. The interest payable on the recomputed duty liability will sustain. The appeal in A. No. 16/2019 is disposed of accordingly."*

8. From paragraphs 6(f) and (g) of the impugned order, it is seen that the Commissioner (Appeals) has directed to calculate the depreciation by giving an overall limit of 70%. The appeal was only with regard to the question as to whether the straight line method or the written down value method has to be adopted for calculating the depreciation. In such circumstances, when both sides did not have any contentions as to the rate of 2.5% applied, the Commissioner (Appeals) ought not to have given any direction to calculate the depreciation by subjecting it to a cap of 70%.

9. The Tribunal in the case of *M/s. Siddharth Polysacks Pvt. Ltd. (supra),* on the very same issue of the method that has to be adopted for calculation of depreciation prior to 27.02.2010, has held that the straight line method has to be adopted. The relevant paragraph is noticed as under:

> *"The only dispute in the present appeal is whether prior to 27-2-2010 the reversion of Cenvat credit availed on capital goods shall be on the written down value method or straight line method. Both sides agree that after 27-2-2010 the method prescribed was straight line. Appellant followed straight line method. But prior to that there was no express provision of law. The demand in question is Rs. 3,13,336/-. It does not appeal to common sense as to the reason why appellant shall suffer in absence of clarity in law and when ambiguity*

> *was resolved by legislature after 27-2-2010 prescribing straight line method. Extending application of such principle the controversy may be resolved. It appears that by this process there may not be much Revenue implication to cause prejudice to Revenue. Further, if straight line method is followed, in what way Revenue may be prejudiced has not been brought out in the order. Therefore, following straight line method does not appear to be illogical. Accordingly, appeal is allowed."*

The Division Bench of the Tribunal in the case of *M/s. Navin Fluorince International Ltd. (supra)* has also taken a similar view.

10. After perusal of records and also following the decisions stated above, I am of the view that the duty has to be determined by applying 2.5% per quarter and calculating depreciation adopting the straight line method. For the limited purpose of quantification of duty, the matter is remanded to the Original Authority, who shall calculate the depreciation adopting the straight line method. The impugned order to this extent is set aside. The rest of the impugned order wherein the demand for the period up to December, 2006 was set aside as time-barred by the Commissioner (Appeals), is not disturbed.

11. The appeal is allowed on the above terms, with consequential reliefs, if any, as per law.

(Order pronounced in the open court on **07.06.2021**)

Sd/-
(SULEKHA BEEVI C.S.)
MEMBER (JUDICIAL)

Sdd