IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 41978 of 2013

(Arising out of Order-in-Appeal Nos. 54 & 55/2013 dated 28.06.2013 passed by the Commissioner of Central Excise (Appeals), Lal Bahadur Shastri Marg, Rathinasamy Road, C.R. Buildings, Bibikulam, Madurai – 625 002)

M/s. Vignesh Match Works Private Limited **: Appellant**
3/198-4, Sattur Main Road,
Chinnakamanpatti (Post), Sattur Taluk,
Virudhunagar District – 626 001

VERSUS

The Commissioner of Central Excise **: Respondent**
Lal Bahadur Shastri Marg, Rathinasamy Road,
C.R. Buildings, Bibikulam, Madurai – 625 002

APPEARANCE:

None for the Appellant

Shri Sathya Narayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 40348 / 2023

DATE OF HEARING: 02.05.2023

DATE OF DECISION: 26.05.2023

Order : [Per Hon'ble Mr. Vasa Seshagiri Rao]

M/s. Vignesh Match Works Private Limited, 3/198-4, Sattur Main Road, Chinnakamanpatti, Sattur Taluk, Virudhunagar District, the appellant herein, were issued with a Show Cause Notice C.No. V/48/15/38/2011-Adjn. dated 07.06.2011 by the Deputy Commissioner of Central Excise, Virudhunagar Division for wrong availment of input tax credit of amount paid on fully exempted goods as per Sl. No. 90 of Notification No. 04/2006-C.E. dated 01.03.2006, as amended.

2.1 The appellant are engaged in the manufacture of safety matches who have purchased paper / paper board from paper / paper board manufacturers (principal manufacturer) and used the same in the manufacture of final products, as inputs, and avail CENVAT Credit in respect of the duty paid on such inputs. The principal manufacturer has paid duty on paper / paper boards at a concessional rate of 4% as available under Sl. No. 91 of the table annexed to Notification No. 04/2006-C.E. without availing full exemption up to the first clearances of 3,500 M.T. available under Sl. No. 90 of the table annexed to the Notification even though they fully satisfy all the conditions stipulated under condition No. 10 of the annexure to the said Notification.

2.2 The main contention of the Department is that payment of duty at concessional rate without availing exemption for their first clearances of 3,500 M.T. is violative of the provisions of Explanation to sub-section (1A) of Section 5A of the Central Excise Act, 1944 and therefore, the duty paid by the principal manufacturer has to be considered as a deposit and in respect of which credit cannot be availed by the appellant. Downstream units like the appellant, who had purchased paper / paper board before the principal manufacturer had crossed the first clearances of 3,500 M.T., were considered not eligible to avail input tax credit.

3. On adjudication, a demand of Rs.1,18,124/- was confirmed, being the CENVAT Credit wrongly taken, under Rule 14 of the CENVAT Credit Rules, 2004 along with interest thereon and also imposed an equal penalty of Rs.1,18,124/- under Rule 15(1) of the CENVAT Credit Rules, 2004. An appeal being filed with the Commissioner of Central Excise (Appeals), Madurai, vide Order-in-Appeal Nos. 54 & 55/2013 dated 28.06.2013 the same was rejected, upholding the order passed by the original authority, but setting aside the equal penalty imposed.

4. In the grounds-of-appeal, the appellant has contended that exemption granted under Notification No. 04/2006-C.E. dated 01.03.2006 is not an absolute one and as such, the CENVAT Credit taken based on duty paying documents is regular.

5. When the appeal was posted for hearing, none appeared for the appellant. However, written submissions were filed with a request to dispose of the appeal on the basis of the submissions made.

6.1 In the written submissions, the appellant through its Managing Director, has put forth that the Tribunal, Chennai Bench, in various cases has held that the exemption is not an absolute exemption, but a conditional exemption and therefore, it is not mandatory to avail such exemption as per Section 5A (1A) of the Central Excise Act, 1944. As such, payment of Central Excise Duty by the paper / paper board manufacturers on the first clearance of 3,500 M.T. at the rate of 4% under Sl. No. 91 of Notification No. 04/2006-C.E. is in order and the same is eligible for CENVAT Credit in terms of the CENVAT Credit Rules, 2004.

6.2 In support of this contention, reliance has been placed on the following orders: -

(i) Kovai Maruthi Paper and Boards & ors. v. Commissioner of Central Excise, Salem [Final Order Nos. 41301-41309/2018 dated 11.04.2018 – CESTAT, Chennai]

(ii) Sripathi Paper & Boards v. Commissioner of Central Excise & Service Tax, Tirunelveli [Final Order Nos. 41906-41909/2018 dated 30.05.2018 – CESTAT, Chennai]

(iii) M/s. Akshera Papers v. The Commissioner of Central Excise, Salem [Final Order Nos. 42293-42294/2018 dated 06.08.2018 – CESTAT, Chennai]

(iv) Naachiar Paper Boards Pvt. Ltd. v. Commissioner of Customs & Central Excise, Madurai [Final Order No. 41216/2018 dated 13.03.2018 – CESTAT, Chennai]

(v) Parasakthi Fire Works Industries v. The Commissioner of G.S.T. & Central Excise, Tirunelveli [Final Order No. 40212/2023 dated 29.03.2023]

7. Learned Authorized Representative Shri Sathya Narayanan (Asst. Commissioner), reiterated the findings in the impugned order.

8. The only issue to be decided in this appeal is: whether the principal manufacturer is eligible to avail exemption as per Notification No. 04/2006-C.E. dated 01.03.2006 under Sl. No. 91 and clear the goods on concessional payment of duty or whether it is mandatory to avail 'nil' rate of duty as provided under Sl. No. 90 and consequently, whether the appellant herein is eligible for availment of CENVAT Credit of the duty paid by the principal manufacturer?

9. We find that the issue involved in this appeal is no more *res integra* and stands decided by the orders of the Tribunal in various cases cited *supra* which have been relied upon by the appellant in support of their contention.

10.1 In the case of *M/s. Kovai Maruthi Paper and Boards & ors. v. Commissioner of Central Excise, Salem [Final Order Nos. 41301-41309/2018 dated 11.04.2018],* the Chennai Bench of the Tribunal had examined whether the principal manufacturers should compulsorily avail the exemption under Sl. No. 90 of the said Notification which prescribes 'nil' rate of duty. The Tribunal had followed the decision in the case of *M/s. Balakrishna Paper Mills and ors. v. Commissioner of Central Excise [2015-TIOL-1100-CESTAT-MUM]* wherein it was held that an assessee cannot be forced to avail the 'nil' rate of duty provided under Sl. No. 90 of the Notification.

10.2 We find that the Tribunal in the case of *M/s. Sripathi Paper & Boards v. Commissioner of Central Excise & Service Tax, Tirunelveli [Final Order Nos. 41906-41909/2018 dated 30.05.2018]* had occasion to analyse a similar issue, wherein it was decided as under: -

> *"6. A bare reading of Sl.No. 90 of the Notification supra, we find that the same is controlled by the condition No. 10. While the rate of duty on the goods described at*

> *Sl.No. 90 are 'nil' ie., exempted, the goods at Sl.No. 91 are taxed at 4%; Sl.No. 90 is controlled by condition No. 10 whereas Sl.No. 91 is controlled by condition No. 11. The first condition is that the exemption is available for the clearance of first 3500 MTs and the second condition is that the exemption is not applicable to a manufacturer who avails exemption under Notification No. 8/2003-CE dated 01.03.2003. The 'nil' rate of tax is therefore available subject to the satisfaction of both the above conditions.*
>
> *An identical issue came to be decided by this Bench in a batch matter in the case of M/s. Kovai Maruthi Paper and Boards &Ors. Vs. CCE, Salem (supra) involving the following issue extracted for the sake of convenience:-*
>
> > *9. The common issue that arises for consideration in all these appeals is whether the assessees are eligible to avail exemption as per the Notification No. 4/2006 under Sl. No. 91 and clear the goods on concessional payment of duty or whether it is mandatory to avail 'nil' rate of duty as provided under Sl. No. 90.*
>
> *This Bench relying on the decision of Balakrishna Paper Mills & Others (supra) had thus concluded that the demand raised by the Revenue could not be sustained. On a reading of the above order of this Bench we find that the issue is no more res integra and therefore, we follow the same ratio decidendi to hold that the demand raised by the Ld. Commissioner is wrong and set aside the findings of the Ld. Commissioner wherein the Cenvat credit was disallowed. Appeals of the assessee are allowed with consequential reliefs, if any."*

10.3 The ratio of the above orders was followed by the Tribunal in the case of *M/s. Parasakthi Fire Works Industries v. The Commissioner of G.S.T. & Central Excise, Tirunelveli [Final Order No. 40212/2023 dated 29.03.2023]* wherein an identical issue came up for examination. The relevant observations of the Bench are reproduced below:-

> *"5. In the case of Kovai Maruti Paper Boards & Ors. (supra), the Tribunal had examined whether the principal manufacturers should compulsorily avail exemption at Sl.No.90 which specifies 'Nil' rate of duty. The Tribunal followed the decision in the case of Balakrishna Paper Mills and Others – 2015-TIOL-1100 and held that it is not*

mandatory to avail Sl.No.90 which extends 'Nil' rate of duty and that the assessee has the option to pay duty at concessional rate of 4%.

6. After appreciating the facts and following the decisions cited supra, we are of the considered opinion that the demand cannot sustain.

7. In the result, the impugned order is set aside. Appeal is allowed with consequential relief, if any."

11. In view of the above judicial precedents, we set aside the impugned order.

12. The appeal is allowed with consequential relief, if any.

(Order pronounced in the open court on **26.05.2023**)

Sd/-
(VASA SESHAGIRI RAO)
MEMBER (TECHNICAL)

Sd/-
(P. DINESHA)
MEMBER (JUDICIAL)

Sdd