IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHENNAI

REGIONAL BENCH – COURT NO. I

Excise Appeal No. 41708 of 2014

(Arising out of Order-in-Appeal No. 127/2014-CE dated 25.04.2014 passed by the Commissioner of Central Excise (Appeals), No. 1, Foulks Compound, Anai Road, Salem – 636 001)

M/s. Blue Mount Textiles **: Appellant**
Badrakaliamman Kovil Road, Nellithurai (PO),
Mettupalayam – 641 305

VERSUS

Commissioner of Central Excise **: Respondent**
No. 1, Foulks Compound, Anai Road,
Salem – 636 001

APPEARANCE:

Shri S. Durairaj, Advocate for the Appellant

Shri N. Satyanarayanan, Assistant Commissioner for the Respondent

CORAM:

HON'BLE MR. P. DINESHA, MEMBER (JUDICIAL)

FINAL ORDER NO. 40043 / 2024

DATE OF HEARING: 09.01.2024

DATE OF DECISION: 11.01.2024

Order :

This appeal is filed by the assessee against the Order-in-Appeal No. 127/2014-CE dated 25.04.2014 passed by the Commissioner of Central Excise (Appeals), Salem.

2. Heard Shri S. Durairaj, Ld. Advocate for the appellant and Shri N. Satyanarayanan, Ld. Assistant Commissioner for the Revenue. After hearing both sides, I find that the issue lies on a very narrow compass.

3.1 Facts, as could be gathered from the documents placed on record, reveal that the appellant and M/s. Sri Gugan Mills [hereinafter referred to as 'SGM'] were the two units of M/s. Sharadha Terry Products Ltd.; the said M/s. SGM was an Export Oriented Unit (EOU). It appears that in-principle exit order was issued by MEPZ, Chennai on the condition that appropriate Customs and Excise Duty shall be paid on the stock of finished goods, inputs, raw materials and capital goods, which appears to have been paid by M/s. SGM and thereafter, final exit order was issued vide letter dated 09.05.2011.

3.2 It appears that the said M/s. SGM were entitled for CENVAT Credit of Excise Duty paid on the de-bonded inputs / raw materials and the duty paid on the capital goods; the total credit amount was Rs.31,26,923/-. Consequently, they filed their ER-1 Return for July 2011 with necessary details including the above.

3.3 It appears that Board of M/s. Sharadha Terry Products Ltd. decided to merge the operation of M/s. SGM with the appellant, which fact was communicated to the jurisdictional officer vide letter dated 29.09.2011, they had also intimated about the transfer of credit under Rule 10 of the CENVAT Credit Rules, 2004, they had also filed another letter dated

10.10.2011 enclosing necessary declaration to the effect of accounting of assets and liabilities of M/s. SGM in their financial statements.

3.4 It appears that subsequently, the appellant took credit of Rs.31,26,923/- which was lying unutilized in the ER-1 of M/s. SGM. In the subsequent ER-1 Return for the month of February 2012, the said M/s. SGM appears to have indicated the above transfer of credit to the appellant.

4. Almost a year later, the Revenue appears to have issued a Show Cause Notice proposing to deny the CENVAT Credit availed by the appellant, to which it appears that the appellant filed a very detailed reply, but however, the adjudicating authority vide Order-in-Original Sl. No. 18/2013 CX-ADC dated 30.12.2013 having confirmed the proposals in the Show Cause Notice thereby raising the demand, the appellant appears to have approached the first appellate authority with a prayer for setting aside the above demand confirmed by the original authority; but however, even the first appellate authority vide Order-in-Appeal No. 127/2014-CE dated 25.04.2014 having upheld the Order-in-Original, the present appeal has been filed.

5.1 Shri S. Durairaj, Ld. Advocate for the appellant, seriously contended that the appellant had furnished all the details before the lower authorities with a request for verification, but however, the adjudicating authority, ignoring the said plea of the appellant, had passed the Order-in-Original dated 30.12.2013, which later on came to be upheld even by the first appellate authority.

5.2 He would also contend that the appellant has made available all the required documents, but it was only the fault on the part of the Revenue in not causing any verification, which has resulted in the demand vide Order-in-Original; the said order was passed in the year 2013 which is more than ten years old. He would therefore pray that the appeal be allowed since it is implied that the Revenue has accepted the veracity of the appellant's claims.

6. *Per contra*, Shri N. Satyanarayanan, Ld. Assistant Commissioner for the Revenue, supported the findings of the lower authorities.

7. Having considered the rival contentions, I find that the only issue to be decided by me is: whether the denial of CENVAT Credit as upheld in the impugned order is justified in the eye of law?

8. I have perused the documents placed on record and the various letters enclosing documents addressed to the authorities. The Order-in-Original is very silent on all the documents claimed to have been furnished by the appellant. There is also no denial insofar as the merger of M/s. SGM with the appellant is concerned, nor is there any denial as to the availability of unutilized CENVAT Credit with M/s. SGM that came to be transferred to the appellant. The matter, however, required verification of records *per se* and nothing beyond that; if the records support the claims of the appellant, then there is nothing to be done.

9. In that view of the matter, I am of the view that though much water has flown, in the interests of justice, the matter requires re-adjudication since what is required is the verification of the documents *vis-à-vis* the claim of the appellant, which can only be done by the original authority. Hence, I deem it appropriate to set aside the impugned order and remand the matter back to the file of the original authority for passing a *de novo* order and the original authority shall afford reasonable opportunities to the appellant and then pass a speaking order, after causing due verifications of the documents filed by the appellant. Further, as observed by me, the original

order having been passed in the year 2013, the adjudicating authority shall pass a *de novo* speaking order within a period of sixty days from the date of receipt of this Order by the concerned Commissionerate. All the contentions of the appellant are left open.

10. The appeal is allowed by way of remand.

(Order pronounced in the open court on **11.01.2024**)

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

Sdd