

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL,
SOUTH ZONAL BENCH, CHENNAI
COURT HALL No.III**

EXCISE APPEAL No.40335 OF 2015

(Arising out of Order-in-Original No.65/2014 (C) dated 19.11.2014 passed by Commissioner of Central Excise, Puducherry Commissionerate, No.1, Goubert Avenue, Puducherry 605 001)

M/s.E-mox Device Company

.... Appellant

No.92/3, Manapet Post
Kattukuppam
Puducherry 607 402.

Versus

The Commissioner of GST & Central Excise,

...Respondent

No.1, Goubert Avenue,
Puducherry 605 001.

APPEARANCE :

Ms. Manasa Srinivasan, Advocate
For the Appellant

Mr. N. Sathyanarayanan, Assistant Commissioner (A.R)
For the Respondent

CORAM :

**HON'BLE MS. SULEKHA BEEVI. C.S., MEMBER (JUDICIAL)
HON'BLE MR. VASA SESHAGIRI RAO, MEMBER (TECHNICAL)**

DATE OF HEARING : 22.12.2023

DATE OF DECISION : 02.02.2024

FINAL ORDER No.40123/2024

ORDER : Per Ms. SULEKHA BEEVI. C.S.

Brief facts are that the appellant, M/s.E-mox Device Company is registered with the department for the manufacture of Electrical Mosquito Repellent Device (EMD), falling under Chapter sub-heading No.85167920 of the First Schedule to the Central Excise Tariff Act, 1985. The appellant is availing Cenvat Credit facility under Cenvat Credit Rules, 2004.

1.1 The appellant are the job-workers of M/s.Godrej Consumer Products Ltd., (in short hereinafter M/s.GCPL) (formerly known as Godrej Sara Lee Ltd.,). The appellant clear the goods manufactured by them under names GK 30N/15N COMBIPACK, GK ADV ACTV + SYSTEM, GK SIL POW 45N CMB CSD, GK POWERLITE COM CSD and GK SIL POWER 45N CMB etc., in a Combi-pack, consisting of EMD, manufactured in their unit and Mosquito Repellent Refills supplied by M/s.GCPL, on payment of duty by adopting value under Section 4 or Section 4A of the Central Excise Act, 1944 as may be applicable to a particular case. There is no dispute on the valuation adopted by appellant.

1.2 The appellant availed cenvat credit on inputs used in the manufacture of their final product viz., EMD and also on Mosquito Repellent Refills, received from units of M/s.GCPL, situated at Puducherry and Guwahati. In the case of Mosquito Repellent Refills received from M/s.GCPL, duty had been paid on the value adopted by M/s.GCPL under Section 4A of Central Excise Act, 1944.

1.3 It was noticed that the units of M/s.GCPL at Guwahati had availed erroneous and excess refund by wrongly availing North East exemption Notification No.20/2007-CE, by paying excess duty

through the mode of adopting higher value determined under Section 4A of the said Act in respect of the Mosquito Repellent Refills cleared by them on stock transfer to their own unit in Puducherry which were ultimately delivered to the job worker. According to department, M/s.GCPL at Guwahati, instead of adopting the correct value to be determined under Section 4 of Central Excise Act, 1944 read with Rule 8 of the Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000, with intent to obtain erroneous refund under Notification No.20/2007-CE, had undervalued the goods by adopting valuation under Section 4A and evaded duty. A Show Cause Notice dated 03-04-2013 was issued by the Commissioner of Central Excise, Guwahati to the units of M/s.GCPL at Guwahati by alleging suppression of facts to demand a sum of Rs.2,76,53,587/-, being erroneous refund relating to the period from March 2008 to December 2012 under proviso to Section 11A(1) Section 11A(4) along with interest under Section 11AA/11AB and to impose penalty under Section 11AC.

1.4 Consequently, it was noticed that the units of M/s.GCPL situated at North East (Guwahati) engaged in manufacturing 'Mosquito Repellant Refills' cleared these goods to their job-worker unit, M/s.e-mox, (appellant herein) situated in Pondicherry. M/s.GCPL at Guwahati by paying excess duty on Mosquito Repellent Refills in the aforesaid manner, thereby passed on excess credit to their job-worker unit, the appellant herein. The appellant as a job-worker unit manufactured vaporizing machines (EMD), put them along with 'Mosquito Repellant Refills' received by them from M/s.GCPL, Guwahati in a combo pack, and cleared to customers as

per the direction of M/s.GCPL. The appellant being the job-worker unit had availed cenvat credit of duty paid on Mosquito Repellent Refills which included the excess credit passed on to them in the aforesaid manner.

1.5 It appeared that Mosquito repellent refills classifiable under CETH 38.08 of the schedule to Central Excise Tariff Act, 1985 were cleared entirely by M/s.GCPL situated at North East [Guwahati] on MRP based assessment (by adopting higher value) to their job worker unit, the appellant herein, in relation to further production (industrial use). In this way, the units of M/s.GCPL situated at North East [Guwahati] managed to get more refund under area based exemption notification No.20/2007 CE, while simultaneously passing on higher CENVAT credit to the job-worker unit, M/s.e-mox. Though the commodity was liable for MRP based assessment if meant for retail sale, since the said clearances were consigned to GCPL's job-worker for using them in the manufacture of other excisable goods, the MRP based assessment would not apply. At the receiving end, the job-worker i.e. the appellant has taken excess credit as a result of the said modus operandi.

1.6 It appeared to department that the appellant had wrongly taken CENVAT credit in respect of inputs by reason of suppression of facts and also contravened the provisions of Rule 3 & 9 of the Cenvat Credit Rules, 2004 with intent to avail ineligible Cenvat credit and hence were liable to penalty in terms of the provisions of Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

2. It appeared that the appellant has availed excess cenvat credit on the invoices issued by M/s.Godrej Consumer Products Limited (GCPL), Kalapahar, Guwahati and M/s.Godrej Consumer Products Limited, Lokhra, Guwahati, which is ineligible. Show Cause Notice dated 06.11.2013 was issued to the appellant proposing to recover the wrongly availed cenvat credit along with interest for the period from October 2008 to December 2012, and imposing penalties. After due process of law, the Original authority confirmed the demand along with interest and for imposed penalties. Aggrieved by such order, the appellant is now before the Tribunal.

3. Ld. Counsel Ms. Manasa Srinivasan appeared and argued for the appellant. It is submitted by the learned counsel that the Impugned Order seeks to recover Cenvat credit validly availed by the appellant alleging that excess credit has been passed on to the appellant by Godrej Consumer Products Limited, Kalapahar, Guwahati (GCPL, Kalapahar) and Godrej Consumer Products Limited, Lokhra, Guwahati (GCPL, Lokhra) due to alleged overvaluation done by them in order to avail excess refund in terms of Area-based exemption under Notification No.20/2007-C.E. dated 25.04.2007.

3.1 The Appellant is a job-worker of Godrej Consumer Products Limited, Puducherry (GCPL, Puducherry). They are engaged in the manufacture of Combination Pack consisting of EMD, which is manufactured by the Appellant and refill bottles supplied by GCPL, Kalapahar and GCPL, Lokhra. The EMD is manufactured by assembly of various components supplied by GCPL, Puducherry and the appellant receives conversion charges for the same. The Combination Pack manufactured by the appellant is cleared on

payment of Excise duty on value determined under Section 4A of the Excise Act (MRP based value).

3.2 The Appellant has availed Cenvat credit of inputs including the Refill bottles received from GCPL and used in the manufacture of the final product i.e., the Combination pack.

3.3 M/s.GCPL, Kalapahar and M/s.GCPL Lokhra were engaged in the manufacture of Mosquito repellent refills, mosquito mats, etc. The refill is an independent product, normally sold in the market separately in a carton. The MRP is marked both on the refill bottle as well as the carton.

3.4 The refill bottles were shipped cleared by GCPL, Kalapahar and GCPL, Lokhra to the Appellant in the retail pack with MRP under 'Bill to Ship to Model'. The invoice was raised in favour of M/s.GCPL, Puducherry and the refill bottles were shipped to the Appellant.

3.5 Unlike the refill bottles, the EMD is never sold in the market separately. The refill bottle kept in the Combination pack is the same in all respects including packaging, quantity and MRP as that of which is sold in the market.

3.6 The Appellant submits that the Impugned Order relies extensively on the proceedings initiated against GCPL, Kalapahar and GCPL Lokhra. The manufacturing units at GCPL, Kalapahar and GCPL, Lokhra at Guwahati, Assam availed the Area Based Exemption under Notification No.20/2007-C.E. dated 25.04.2007 as amended by Notification No.20/2008 dated 27.03.2008 w.e.f 01.04.2008. In terms of the Notification, exemption is given on duty payable on value addition which was fixed at 34% of the duty payable for goods manufactured under Chapter 38 of the Central Excise Tariff Act, 1985. The refill bottles were cleared by GCPL under the above Notifications on payment of excise duty on value determined under Section 4A of the Central Excise Act, 1944. The refill bottles were sold as such and were also supplied to the appellant for manufacture of Combination packs. The MRP of the refill bottle is the same as that of the refill bottles sold to the ultimate consumers.

3.7 Proceedings were initiated against GCPL, Kalapahar and GCPL, Lokhra by Commissioner of Central Excise, Guwahati vide Show Cause Notice dated 03.04.2013, which culminated in Order in Original No.03/2013-14 dated 18.12.2013. The demand was confirmed on the GCPL Guwahati units on the ground that the refill bottles are assessable to Excise duty based on value determined under Rule 8 of the Central Excise Valuation Rules, 2000 (110% cost value) and not under Section 4A of the Excise Act. It was held that GCPL had resorted to MRP valuation and paid excess duty with the intention to avail excess refund under the Area Based Exemption Notifications. It is pertinent to note that the OIO has not disputed that the refill bottles manufactured by GCPL are eligible for MRP based valuation under Section 4A of the Excise Act if sold to retail customers.

3.8 The demand confirmed vide OIO dated 18.12.2013 is tabulated hereinbelow:

	Period involved	Amount of refund denied
GCPL, Kalapahar	March 2008 to March 2012	90,39,471
GCPL, Lokhra	April 2008 to December 2012	1,86,14,116
	Total	2,76,53,587

3.9 Aggrieved by the above Order, GCPL, Kalaphar and GCPL, Lokhra have filed an Appeal in E/75474/2014 and E/75475/2014 and the same are pending before the CESTAT, Kolkata.

3.10 Parallely, the Ld. Commissioner of Central Excise, Puducherry issued the present Show Cause Notice No.67/2013 dated 06.11.2013 under Rule 14 of CCR read with Section 11A of the Cenral Excise Act for recovery of excess Cenvat credit allegedly passed on to and availed by the Appellant due to over-invoicing done by GCPL, Kalapahar and GCPL, Lokhra. The SCN proposed to recover credit of Rs.7,38,81,431/- (along with interest and penalty) for the period between October 2008 to December 2012, which has been confirmed vide the impugned order.

3.11 The Cenvat credit taken by the Appellant is legal and proper and in terms of Rule 12 of the CCR. Rule 12 of the CCR carves out a special provision in respect of inputs supplied by factories located in certain specified areas such as the North-East region. As per Rule 12 of the CCR, which includes Notification No.20/2007-C.E. dated 25.04.2007, Cenvat credit on inputs manufactured and supplied by GCPL units located in Assam shall be admissible as though no portion of the duty paid on such inputs was exempted under the notification. Therefore, the Appellant is entitled to take full credit of the duty paid including the portion that is refunded to the manufacturer/supplier.

3.12 In the instant case, the Appellant has taken credit on the strength of invoices issued by duty paid documents. The inputs were received and used in the manufacture of final products by the Appellant. In such a scenario, the Appellant is entitled to take credit of the duty paid to GCPL, Kalapahar and GCPL, Lokhra. It is not in dispute that duty is paid on the Mosquito Repellent Refills. Then credit ought not to be denied to the Appellant irrespective of the proceedings initiated against GCPL, Kalapahar and GCPL, Lokhra. In this regard, the Appellant placed reliance on the following decisions:-

- (i) *Commissioner of Central Excise, Chennai-I v. CEGAT, Chennai -2005 (1) TMI 125 High Court of Judicature at Madras:*
- (ii) *The Madras Aluminum Co. Lid., Guwahati v. Commissioner of Central Excise, Salem 2015 (5) TMI 97-CESTAT Chennai,*
- iii) *Balakrishna Industries Ltd. v. Commissioner of C. Ex., Jaipur-I-2014 (309) E.L.T. 354 (Tri.-Del.)*

The Appellant also placed reliance on Circular No. 877/15/2008-CX dated 17.11.2008 issued by the Board wherein it has been clarified that Rule 3 of the CCR allows credit of 'duty paid' by the manufacturer and not 'duty payable'. In light of the above, it is submitted that the Appellant is entitled to avail credit of duty paid and the Impugned Order merits to be set aside on this ground alone.

3.13 Without prejudice, the disallowance of credit, if at all correct, can only be to the extent of Rs.2,76,53,587/-being the amount held

as erroneous refund at the supplier's end and not Rs.7,38,81,431 which is disallowed and confirmed in the Impugned Order.

3.14 The Impugned Order has confirmed reversal of Cenvat credit for the period between October 2008 to December 2012 and the Show Cause Notice is dated 06.11.2023. A substantial portion of the demand for the period up to October 2012 is confirmed under extended period. The Appellant submits that there is no suppression of facts or intention to evade payment of duty. The Appellant was under a bona fide belief that credit is eligible. During the disputed period, the Appellant had always disclosed the Cenvat credit A/c along with the monthly E.R.-1 Returns. It is well settled that suppression cannot be alleged when information is taken from the books of accounts of Appellant and the demand is based on audit of books maintained by the Appellant. In light of the above, the Appellant submits that extended period of limitation cannot be invoked in the present case.

3.15 The Learned Counsel prayed that the appeal may be allowed.

4. The Learned AR, Shri N.Satyanarayanan appeared and argued for the department.

4.1 It is submitted that the two units of M/s.GCPL at Guwahati have availed area based exemption under Notification No.20/2007-C.E. dated 25.04.2007, which is granted in the form of refund of duty after payment on value addition and the duty on value addition has been fixed as 34% of total duty payable. In order to avail more refund, M/s.GCPL has resorted to overvaluation of their goods i.e., Mosquito Repellent Refills, and paid excess duty. The SCN issued to these units have been adjudicated and the demands have been confirmed by ordering recovery of the excess refund granted to these units with consequential penalty and interest.

4.2 It is clear from the above that the units of GCPL has passed on excess Cenvat Credit to the appellant. The credit is thus ineligible and the order passed is legal and proper. It is prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue to be decided is whether the credit of duty paid on Mosquito Repellent Refills procured from GCPL, Guwahati are legal and proper. At the outset, it is to be stated that the appellant has received the inputs and used them in the manufacture of final product namely, combi pack of Mosquito Repellent Refill Device. It is also not disputed that the appellant paid duty on the inputs procured by them and used in the manufacture of final product.

7. Rule 3 of the Cenvat Credit Rules, 2004 provides that a manufacturer should be allowed to avail Cenvat Credit of the duty paid on inputs used in the manufacture of dutiable final product. Thus, the appellant has availed Cenvat Credit of the duty paid on inputs used in the manufacture of dutiable final product. There is no dispute that the duty has been collected from the appellant and deposited with the Government. The allegation is that the manufacturer of Mosquito Repellent Refills, i.e. the units of GCPL at Guwahati, had wrongly availed North East exemption Notification No.20/2007-CE, by paying excess duty through the mode of adopting higher value as determined under Section 4A of Central Excise Act, 1994 instead of adopting the value as under Section 4 of Central Excise Act, 1994 r/w Rule 8 of CVR 2008.

8. As per Notification No.20/2007 dated 25.04.2007, the manufacturer of Mosquito Repellent Refills has to discharge all duties on final products and then claim refund. The notification grants exemption by way of refund. The units of GCPL, Guwahati have paid duty adopting transaction value as under Section 4A of Central Excise Act, 1994. The said duty has been passed on to the appellant, on which the appellant has availed credit.

9. At this juncture, Rule 12 of Cenvat Credit Rules, 2004 requires to be noticed, which reads as under:

“RULE 12. Special dispensation in respect of inputs manufactured in factories located in specified areas of North East region, Kutch district of Gujarat, State of Jammu and Kashmir and State of Sikkim. —Notwithstanding anything contained in these rules, [but subject to the proviso to clause (i) of sub-rule (1) of Rule 3], where a manufacturer has cleared any inputs or capital goods, in terms of notifications of the Government of India in the Ministry of Finance (Department of Revenue) No. 32/99-Central Excise, dated the 8th July, 1999 [G.S.R. 508(E), dated the 8th July, 1999] or No. 33/99-Central Excise, dated the 8th July, 1999 [G.S.R. 509(E), dated the 8th July, 1999] or No. 39/2001-Central Excise, dated the 31st July, 2001 [G.S.R. 565(E), dated the 31st July, 2001] or notification of the Government of India in the erstwhile Ministry of Finance and Company Affairs (Department of Revenue) No. 56/2002-Central Excise, dated the 14th November, 2002 [G.S.R. 764(E), dated 14th November, 2002] or No. 57/2002-Central Excise, dated the 14th November, 2002 [GSR 765(E), dated the 14th November, 2002] or notification of the Government of India in the Ministry of Finance (Department of Revenue) No. 56/2003-Central Excise, dated the 25th June, 2003 [G.S.R. 513(E), dated the 25th June, 2003] or 71/2003-Central Excise, dated the 9th September, 2003 [G.S.R. 717(E), dated the 9th September, 2003, [or No. 20/2007-Central Excise, dated the 25th April, 2007 [GSR 307(E), dated the 25th April, 2007]] [or No. 1/2010-Central Excise, dated the 6th February, 2010 [G.S.R. 62(E), dated the 6th February, 2010]] the CENVAT credit on such inputs or capital goods shall be admissible as if no portion of the duty paid on such inputs or capital goods was exempted under any of the said notifications.”

The above rule states that in the case of Area Based exemption notification, the credit on inputs and capital goods shall be admissible, as if no portion of the duty paid on such inputs or capital goods was exempted under the said notification. The rule carves out

a special provision wherein, by Area based exemption notification, even if the duty paid by manufacturer is refunded, the Cenvat credit availed of duty paid on inputs and capital goods would be eligible. In our view, the appellant has rightly availed the Cenvat credit of the duty collected from them by the manufacturer who has availed area based exemption notification. The appellant does not have any say or control as to the method of valuation adopted by the manufacturer, who supplied the inputs to the appellant. Cenvat credit cannot be denied at the recipient's end, without any legal basis.

10. The High Court of Madras, in the case of **Commissioner of Central Excise, Chennai – 2005 (1) TMI 125 High Court of Judicature at Madras**, had occasion to analyse a similar situation wherein, the supplier of goods was unaware of an exemption notification and paid the duty on the final product which was passed on to the assessee. The department was of the view that as the supplier is eligible for exemption, the assessee is not eligible for credit. The High Court of Madras held that if the duty has been paid on the inputs, Cenvat credit cannot be denied. The relevant para reads as under:-

“4. A perusal of Section 57A(1) shows that the terminology used therein is ‘paid’ and not ‘payable’. This distinction, in our opinion, is important because it indicates that we have to take into account the factual state of affairs. In other words, we have to consider whether the duty has actually been paid on the raw material and not whether duty was payable or not. In the present case, it is not in dispute that the assessee's supplier in fact that paid the duty on the raw materials supplied to the assessee and the department accepted this excise duty. The concept of Modvat is that if the raw material suffered duty then relief should be given so far as the excise

duty on the final product is concerned. For instance, if a manufacturer of coat purchases cloth on which the manufacturer of cloth has paid excise duty say Rs. 20/-, then if the excise duty on the coat is say Rs.100/-, the sum of Rs. 20/- has to be deducted from it and only Rs. 80/- is payable by the coat manufacturer. This is no doubt a rough and ready example but it illustrates the concept of Modvat. Since the very concept of Modvat is to mitigate double taxation, if the raw material has suffered excise duty then relief should be granted in respect of duty payable on the final product.”

11. In the case of **Balakrishna Industries Ltd. v. Commissioner of Central Excise., Jaipur-I – 2014 (309) E.L.T. 354 (Tri.-Delhi)**, the issue under consideration was whether the goods supplied to the appellant without availing the benefit of Notification No.44/2001-CE (NT)/ 26.06.2001 and consequent credit passed on to assessee was eligible or not. The Tribunal followed the decision in the case of Commissioner of Central Excise v. MDS Switchgear Ltd.–s2008 (229) ELT. 485 (S.C.) to hold that credit is eligible.

12. After appreciating the facts, evidence placed before us and following the decisions cited above, we are of the considered opinion that the denial of credit is not justified. The demand, interest and penalties cannot sustain.

13. In the result, the Impugned Order is set aside. The appeal is allowed with consequential reliefs, if any.

(Pronounced in court on 02.02.2024)

(VASA SESHAGIRI RAO)
Member (Technical)

(SULEKHA BEEVI.C.S.)
Member (Judicial)

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