CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL

CHENNAI

REGIONAL BENCH - COURT No. III

Excise Appeal No.40360 of 2015

(Arising out of Order-in-Appeal No. 215/2014 dated 19/29.11.2014 passed by Commissioner of Central Excise (Appeals-I), Coimbatore)

M/s. ITC Ltd., **.... Appellant**
PSP Division, Unit Kovai,
Vivekanandapuram,
Thekkampatty Village,
Mettupalayam – 641 113.

VERSUS

The Commissioner of CGST & Central Excise **...Respondent**
6/7, ATD Street,
Race course road,
Coimbatore – 641 018.

APPEARANCE :

Ms. Nimra Ali, Advocate, for the Appellant
Shri. M. Selvakumar, Authorised Representative for the Respondent

CORAM :

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

FINAL ORDER No.40734/2024

DATE OF HEARING : 12.06.2024
DATE OF DECISION : 25.06.2024

Per Ms. Sulekha Beevi. C.S

Brief facts are that, the appellants are manufacturers of Paper and Paper Boards. It was noticed by the department that the appellants cleared paper boards to their various buyers without payment of duty, availing Notification No.43/2001-CE (NT) dated

26.06.2001 under Annexure I Certificate issued under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), Rules 2001. On verification of the clearances effected, it was noted that Annexure - I Certificates have been issued for a particular financial year whereas, clearances have been undertaken in the subsequent period, that is beyond the period of exemption granted. Hence, it appeared that the exemption from duty would not be available for the clearances effected beyond the stipulated period. Therefore, a show cause notice dated 06.05.2013 was issued to the appellant for the period from April 2008 to February 2013 proposing to demand Central Excise Duty of Rs.20,82,825/- along with interest and for imposing penalties. After due process of law, the adjudicating authority confirmed the demand along with interest and imposed equal penalty under Section 11 AC of the Central Excise Act, 1944 as well as penalty under Rule 25 of the Central Excise Rules 2002. Against such order, the appellants approached the Commissioner (Appeals) who vide order impugned hearing upheld the order passed by the adjudicating authority. Hence, this appeal.

2. The Ld. Counsel Ms. Nimra Ali, appeared and argued for the appellant.

2.1. The Appellant had cleared paper boards to various buyers during the impugned Period by availing exemption under Notification 43/2001 -CE(NT) dated 26.06.2001. The said clearances were made against Annexure-I Certificates issued under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 ('2001 Rules') received from the buyers. The buyer undertakes to use the goods for the intended purpose i.e., export and accordingly, the said goods are used for export only. The Impugned Order does not allege that the goods are not used for export.

Case of the Department:

2.2 It is the case of the Department that the Appellants have received the Annexure 1 Certificates from buyers only for the financial year 2007-2008, however, the goods have been cleared beyond the said financial year thereby violating the conditions stipulated in the Impugned Notification r/w with the 2001 Rules.

A. Submission of Annexure 1 Certificate is a procedural condition. Substantive benefit of the Impugned Notification cannot be denied on technical grounds:

A.1 At the outset, the Appellant submits that they have cleared the goods against the quantity mentioned in the Annexure-I Certificate received from the buyer and the buyer has also duly executed the bond for the procurement of such quantity of goods.

A.2 Furthermore, the exemption from payment of duty under the impugned Notification is granted for those goods which are ultimately exported. Thus, the mandatory condition is to procure the goods for its use in the intended purpose i.e., export. In this regard, there is no allegation in the Impugned Order that the buyers have not used the goods for the intended purpose. In fact, the Order in Original in Paragraph 9.13 at page 296 itself records that there is no allegation that the goods were not used for the intended purpose at the buyers' end.

A.3 The Appellant further submits that in any case there is no allegation that the final products were cleared beyond the quantity mentioned in the Annexure-I certificates without payment of duty. Thus, no excess quantity of goods was removed by the Appellant.

A.4 Furthermore, the Notification nowhere requires the clearances to be made within the same financial year and the 2001 Rules also does not stipulate the same.

A.5 Under such circumstances, the requirement of clearance of goods within a particular financial year can only be a procedural condition. This can further be substantiated by the fact that in some transactions, the Annexure-I Certificates were issued allowing procurement of goods "within one year from the date of issuance of Annexure-I" without mentioning any particular financial year. It is well settled law that substantial benefit of notification cannot be denied for mere procedural lapses. Reliance in this regard is placed on the case of Mangalore Chemicals and Fertilizers Ltd. v. Deputy Commissioner, 1991 (8) TMI 83 — Supreme Court. Further reliance is placed on the following cases:

- C.C.E & S.T. Rajkot v. Reliance Industries Limited, 2021 (12) TMI 848-CESTAT Ahmedabad.
- M/S. S.L. polypack Private Limited v. Commissioner of CGST & CX Howrah Commissionerate, 2023 (1) TMJ 931-CESTAT Kolkata
- Commissioner of Central Excise, Kolhapur v. Menon Exports, 2018 (4) TMI 666 CESTAT Mumbai.

- M/S. Metalink v. Commissioner of' Customs, Kolkata, 2018 (6) TMI 1375-CESTAT Kolkata.

A.6 On this ground itself, the Impugned Order merits to be set aside.

B. Without prejudice, as per the Notification r/w Rule 3(4) and Rule 6 of the 2001 Rules, only the buyer is liable for any contravention of the conditions stipulated in the Notification. The security bond in this regard is also executed by the buyer. Thus, excise duty, if any, should be recovered only from the buyer.

C. Extended period cannot be invoked and the demand of Excise duty to the extent of Rs. 20,25,387/- is barred by limitation:

C.1 The Appellant submits that the period involved in the present dispute is from April 2008 to February 2013 and the SCN for the same was issued only on 06.05.2013 by invoking the extended period of limitation under Section I IA of the Central Excise Act, 1944.

C.2 In this regard, it is submitted that during the impugned Period, the Appellant was duly registered with the Department and was filing E.R. 1 Returns periodically. The fact of clearance of goods against Annexure-I Certificates was duly recorded in the E.R. 1 Returns which is at Page 204 (Vol-l of appeal file). The Annexure-I Certificates received from the buyers were also submitted to the Department as and when received and before the goods were cleared by the Appellant. The said intimations were also duly acknowledged by the Department as and when submitted.

C.3 Thus, it is submitted that the Department was fully aware of the goods being cleared by the Appellant without payment of duty against the Annexure-I Certificates. Therefore, there can be no suppression of information with the intent to evade payment of duty as all the facts were within the knowledge of the department at all points of time. Thus, extended period of limitation cannot be invoked. Reliance in this regard is placed on the case of Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay, 1995 (78) E.L.T. 401 (SC) and the following cases:

- M/S. Nissan Motors India Private Limited v. The Commissioner of CGST and Central Excise, Chennai Outer Commissionerale, Chennai, 2024 (4) TMI 626 CESTAT Chennai
- Commissioner of Central Excise, Mumbai v. Narender Kumar and Co, 2011 (4) TMJ 128- Supreme Court.
- Anand Nishikawa Co. Ltd v. CCE, MeerutJ 2005 (188) ELT 149- Supreme Court.
- CCE, Mumbai IV v. Damnet Chemicals Pvt. Ltd. 2007 (216) ELT 3- Supreme Court.
- Padmini Products Ltd. v. CCE, 1989 (43) ELT 195-Supreme Court.
- Continental Foundation Jt. Venture v. CCE, Chandigarh-l, 2007 (216) ELT 177Supreme Court.

C.4 It is further submitted that the impugned Order does not record any positive finding of suppression of facts by the Appellant. When there is no allegation of suppression, the extended period cannot be invoked. Reliance in this regard is placed on the following cases:

- Union of India v. Rajasthan Spinning & Weaving Mills [2009 (238) E.L.T. 3 (S. C)].
- CCEv. Crocodile (India) Pvt. Ltd. [2013 (297) E.L.T. 363 (Mad.)]

C.5 The Appellant further submits that the entire proceedings were initiated based on the statutory records maintained by the Appellant and therefore, extended period of limitation cannot be invoked.

C.6 Consequently, the demand for the period from April 2008 to March 2012 to the extent of Rs. 20,25,387/- is time barred and liable to be set aside.

D. Interest and Penalty under Section 11 AC cannot be imposed:

D.1 It is submitted that since the entire demand is unsustainable, interest and penalty cannot be imposed. Furthermore, to invoke penalty u/s. I IAC of the Central Excise Act, 1944 r/w. Rule 25 of the Central Excise Rules, 2002, Mens rea is necessary and when no fraud/suppression/misstatement is alleged and proved, penalty cannot be imposed. Reliance in this regard is placed on the following cases:

- Comm. Ofc. Ex., Chandigarh v. Pepsi Foods Ltd, 2010 (260) E.L.T. 481 (S.C.).
- Hindustan Steel Ltd. vs. the State "Orissa 1978 (2) ELTJ159 (SC). ,
- Kellner Pharmaceuticals Ltd. v. CCE, 1985 (20) ELT80.

D.2 In light of the same interest and penalty imposed on the Appellant merits to be set aside.

E. <u>Without prejudice, the Impugned Order has erroneously confirmed the demand of excise duty to the extent of Rs. 6,50,991/-:</u>

E.1 The Appellant submits that assuming without admitting that the allegation raised by the Department is true, even then, the Impugned Order has incorrectly confirmed the demand to the extent of Rs. 71,252/- for the clearances made within the financial year 2010-2011 as per the Annexure-I Certificate. A worksheet evidencing the same is enclosed as Annexure 1.

E.2 Further, certain Annexure-I Certificates allowed procurement of goods within "one year from the date of issue". However, the Impugned Order has incorrectly confirmed the demand to the extent of Rs. 5,60,112/- on such certificates by artificially restricting the date of clearances up to the end of the financial year in which the Certificates were issued. The details of such clearances are enclosed as Annexure-2. It is submitted that the Impugned Order does not record any finding on the same and mechanically confirms the demand of excise duty.

E.3 Furthermore, the impugned Order has incorrectly included paper cess amounting to Rs. 19,627/- which has already been paid by the Appellant which can be verified by the ER-I Returns at Page No. 204 (Vol-l of appeal file). However, the Impugned Order confirms the demand on the ground that the Appellant did not produce evidence for such payment. It is submitted that the said finding is incorrect as it is not their case that the final products were cleared without payment of paper cess.

Thus, without prejudice, the demand of Rs. 6,50,991/- merits to be set aside.

It is prayed that the appeal be allowed.

3. The Ld. AR Shri. M. Selvakumar, appeared and argued for the department. It is submitted that the appellants have cleared the goods beyond the financial year for which they have submitted the Annexure-I certificate. This would mean that clearances were effected beyond the application period (which was duly approved by the competing authority and for which necessary bonds have been executed) and have to be treated as clearances without payment of duty. Therefore, clearances effected beyond the period mentioned in Annexure-I certificate are clearances made in violation of the provisions of Rule 4, 6 and Rule 8 of Central Excise Rules, 2002 and the duty confirmed in respect of such clearances is proper. The contention of the appellant that the duty has to be demanded from the buyer of the goods cannot be accepted. It is the appellant who has cleared the goods to the buyer which is not covered under Annexure-I certificate. Therefore, the duty liability falls upon the appellant. They have not produced the end-use certificate from the buyer of the goods to whom the goods were cleared which again would show that they did not follow the procedures prescribed under law.

4. The Ld. AR argued that Notification No.43/2001-CE (NT) dated 26.06.2001 prescribes safeguards and procedures for procurement of excisable goods without payment of duty. It also prescribes various conditions. As per the notification condition number (ii) specifically

states that "provisions of the central excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 has to be followed. The appellants have not adhered to these rules. When a law describes a thing to be done in a particular manner, it has to be done in that manner alone. Since the clearances do not conform to the financial year mentioned in the application (Annexure-I), the demand of duty for the clearances beyond the period mentioned in the application is legal and proper. It is submitted that the non-payment of duty would not have come to light but for the verification done by the central excise officers. In such circumstances, the demand of duty raised invoking the extended period is also proper. The Ld. AR prayed that the appeal may be dismissed.

5. Heard both sides.

6. The issue to be decided is whether the demand of duty alleging that the clearances are made beyond the period mentioned in Annexure-I certificate is sustainable or not.

6.1 The facts reveal that the appellant had cleared goods during the relevant period to various buyers without payment of duty availing the benefit of Notification No.43/2001-CE (NT) dated 26.06.2001 under the cover of Annexure-I certificate in terms of central excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods), Rules 2001 issued by the jurisdictional Deputy/Assistant Commissioner of Central Excise of the buyers.

7. According to department the application for availing the benefit of notification requires to mention the financial year for which the

goods are cleared. On verification of invoices it was seen that the goods cleared on the basis of the Annexure-I certificates included goods of invoices for the period beyond financial year mentioned. Thus, duty has been demanded alleging that clearances of the Annexure-I certificates do not cover the clearances of goods and thus the benefit of notification is not available. It is to be noted that the manufacturer buyer has used the goods for export and there is no dispute raised in this regard. The allegation of the department revolves around the wrong financial year mentioned in Annexure-I certificate. Needless to say that these certificates are issued by Central Excise Officers of the jurisdiction of the manufacturer buyer after verification and bear endorsement of the officers. This means that the officers have verified the clearances of the goods. There is no allegation that excess goods have been cleared. The only allegation is that the financial year mentioned does not match with the invoices. The same financial year has been copied continuously in most of the Certificates. The notification or Rules does not put forward any condition to mention financial year.

8. For better appreciation, the relevant part of Notification No.43/2001-CE (NT) is reproduced as under:-

> 26th June, 2001
>
> Notification No.43/2001-Central Excise (N.T.)
>
> Inputs for manufacturing/processing of export goods – Procurement without payment of duty – conditions, safeguards and procedures
>
> In exercise of the powers conferred by of sub-rule (3) read with sub-rule (2) of rule 19 of the Central Excise (No.2) Rules, 2001, the Central Board of Excise and

Customs hereby notifies the conditions, safeguards and procedures for procurement of the excisable without payment of duty for the purpose of use in the manufacture or processing of export goods and their exportation out of India, to any country except Nepal and Bhutan, namely: -

(i) the manufacturer or the processor intending to avail benefit of this notification shall register himself under rule 9 of the Central Excise No.2) Rules, 2001;

(ii) provisions of the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001 shall be followed, *mutatis mutandis*;

(iii) the manufacturer or processor shall, while filing declaration under the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001, also declare ratio of input and output and rate of duty payable on excisable goods to be procured without payment of duty;

(iv) the Assistant Commissioner of Central Excise or the Deputy Commissioner of Central Excise shall also verify the correctness of the ratio of input and output and other particulars mentioned in the declaration filed before commencement of export of such goods. He may, if necessary, call for samples of finished goods or inspect such goods in the factory of manufacture for verifying the declarations. He shall, after being satisfied about the correctness of declarations, countersign the application in the manner specified in the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules, 2001;

9. Para ii of the above notification states that the provisions of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001 shall be followed, mutatis mutandis'. As per rule 3 of Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacture of Excisable Goods) Rules

2001, the manufacturer buyer has to make the application. Rule 3 (i) says that the manufacturer buyer who intends to receive goods availing the benefit of notification has to make an application in the form Annexure-I to the jurisdictional AC/DC of Central Excise Commissionerate. Rule 4 gives the procedure to be followed by the manufacturer who supplies the goods. It says that the one copy of application (Annexure-I) is to be forwarded to the manufacturer supplier, so, as to enable the manufacturer supplier to avail the benefit of exemption as per the notification. In such application the manufacturer supplier has to mention the removal details such as number and date of invoice, description, quantity and value of subject goods and amount of excise duty paid at concessional rate. The financial year has been wrongly mentioned in this Form Annexure-I.

10. The relevant part of the format of Annexure-I is as under: -

"We undertake to follow the Central Excise (Removal of Goods at Concessional Rate of Duty for Manufacturer of Excise Goods) Rules 2001 as required by the above notification. The quantity and value of subject goods, we wish to obtain during the financial year …………….. for the aforesaid specified purpose is …………….. (specify quantity and value) and we intend to procure the subject goods for use in our premises at"

11. In Rule 3 & Rule 4 of Central Excise (Removal of Goods Concessional Rate of Duty for Manufacture of Excisable Goods) Rules 2001, there is no requirement to mention financial year in particular. In the application format of Annexure-I, the quantity and value of

goods during the financial year is required to be mentioned. The allegation is that the appellants though mentioned the financial year as 2007-08 has cleared the goods for such Annexure-I certificates for invoices pertaining to subsequent financial years (2009-10) also.

12. The appellant has consistently submitted that the wrong financial year mentioned in the Annexure-I Form is only an error and that the goods cleared to the manufacturer buyer is correct. That as there is no allegation of excess clearances, the benefit of notification ought not to be denied for wrong mention of financial year. This argument advanced by the Ld. Counsel for appellant that the requirement to mention the financial year is only a procedural one for which the substantive benefit of notification cannot be denied is not without force.

13. In the present case, it is the manufacturer buyer who has to make the application before the AC/DC of his jurisdiction. The said application is forwarded to the appellant who has to mention the details of clearances and submit a copy of this application to the Range Superintendent of his jurisdiction. It can be seen that the Annexure-I is an undertaking given by the manufacturer (buyer) guaranteeing the specified quantity and intended purpose of the goods received by him from the appellant. The said application having been verified by the concerned officers of his jurisdiction, the financial year for the specified quantity of goods is not a relevant criteria for the reason that all these clearances are supported by invoices and detailed description of the goods cleared. So, also verified by the jurisdictional authorities of the manufacturer buyer.

14. The argument of the Ld. AR that the appellant has not furnished any end use certificate cannot sustain for the reason that there is no obligation cast upon the appellant to furnish such export proof as per Notification No. 43/2001. Needless to say, that department does not have a case that the various buyers have not exported the goods after the application Annexure-I is endorsed by the jurisdictional officers.

15. On the totality of facts we find that the demand of duty has been made on a minor infraction of wrongly stating the financial year in the application. Such a procedural lapse has to be condoned. The demand of duty alleging that the appellant has violated the conditions of the Notification r/w Rules 2001 cannot sustain. It requires to be stated that the condition of submitting the application is the burden of the manufacturer buyer and demand of duty on the appellant therefore, is excessively harsh and unwarranted. We are of the considered opinion that the demand of duty on the allegations raised in the show cause notice cannot sustain and requires to be set aside.

16. The Ld. Counsel has put forward arguments on the ground of limitation also. Though it is alleged in the show cause notice that the appellant has suppressed facts with intent to evade payment of duty there is no positive act of suppression established against the appellant. It is also seen that all the certificates are endorsed by the jurisdiction officers at the time of clearance as well as receiving the goods by the manufacturer buyer. The appellant has filed ER1 returns declaring the exemption availed by them and also furnished copies of the relevant certificates. In such circumstances, the demand raised alleging suppression of facts with intent to evade payment of duty

cannot sustain. The issue on limitation is answered in favour of the appellant.

17. In view thereof, the impugned order is set aside. The appeal is allowed with consequential reliefs, if any.

(Order pronounced in the open court on 25.06.2024)

(VASA SESHAGIRI RAO)	**(SULEKHA BEEVI. C.S)**
Member (Technical)	Member (Judicial)

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