CUSTOMS EXCISE & SERVICE TAX APPLELLATE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI
COURT NO. II

Excise Appeal No.50903 of 2019 (SM)

[Arising out of Order-in-Appeal No.115(CRM)/CE/JDR/2019 dated 11.02.2019 passed by the Commissioner (Appeals), Central Excise and Central Goods & Service Tax, Jodhpur]

M/s. Mangalam Cement Ltd. **Appellant**
Aditya Nagar, Morak,
Kota.,

VERSUS

Commissioner of Central Goods and Service Tax **Respondent**
G-105, New Industrial Area,
Opp. Diesel Shed, Basni,
Jodhpur, Rajasthan.

APPEARANCE:

Ms. Surabhi Sinha, Advocate for the appellant.
Shri Pradeep Gupta, Authorised Representative for the respondent.

CORAM: HON'BLE SHRI ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO.51866/2021

DATE OF HEARING:11.08.2021
DATE OF DECISION:07.10.2021

ANIL CHOUDHARY:

M/s. Mangalam Cement Ltd., P.O. Aditya Nagar, Morak, Distt.-Kota (hereinafter called the 'Appellants') are engaged in the manufacture of OP/PP Cement falling under Chapter Heading No.2523 of the First Schedule of the Central Excise Tariff Act, 1985.

2. The appellants had filed a rebate claim for an amount of Rs.23,59,941/-, in respect of duty paid on the goods, which were exported by the appellants. The said claim was filed under Rule 18 of Central Excise Rules, 2002.

3. The learned Assistant Commissioner, Central Goods and Service Tax Division-I, Kota vide his Order-in-Original dated 24.05.2017 sanctioned the rebate claim for an amount of Rs.23,59,941/-, but an amount of Rs.13,19,323/- was adjusted against the said amount of Rs.23,59,941/-, which is allegedly due from the appellants, as having been adjudicated vide order-in-original No.9/2006-Addl. Commissioner dated 7.4.2006.

4. The matter was agitated before the Commissioner (Appeals), who vide his order-in-appeal No.115(CRM)CE/JDR/2019 dated 11.02.2019 upheld the above said adjustment in Order-in-Original dated 24.05.2017.

5. Being aggrieved, the appellant have preferred this appeal before the Tribunal.

6. Ld. Counsel for the appellant urges that vide Order-in-Original dated 07.04.2006, a demand of Rs.10,40,618/- was confirmed for disallowance of cenvat credit on cement and TOR Steel Bars. The appellant had preferred appeal before this Tribunal, which was rejected vide a Final Order No.50309/2017-CU(SM) dated 12.01.2017. Thereafter, the appellant filed rectification application, which was also rejected. Thereafter, the appellant has filed appeal before the Hon'ble Rajasthan High Court. Thus, the issue has not attained finality.

7. It is further urged that the adjustment made of the amount of Rs.13,19,323/- from the sanctioned amount of rebate claim is illegal and untenable. Reliance was placed by the appellant on **the following:**

(1) Poonam Trading Company Vs. CC (Import), Mumbai -2008 (229) ELT 627 (Tribunal-Mumbai).

(2) Voltas Ltd. Vs. CCE, Hyderabad-II – 2006 (201) ELT 615 (Tribunal-Bang.)

(3) Ms.M.Michael IN RE : J.K. Steel & Alloy – 2006 (205)ELT 1115 (Commr. Appl.)

(4) Ghatampur Sugar Co.Ltd. Vs. CCE, Kanpur – 2009 (245) ELT 594 (T-Delhi)

(5) Gujarat State Fertlizer Co Ltd. Vs. Union of India – 2013 (290) ELT 161.

8. It was further urged that as the issue of cenvat credit vide Order-in-Original dated 07.04.2006 is still pending before the Hon'ble Rajasthan High Court, the adjustment made in the present proceedings of rebate, is liable to be set aside.

9. Opposing the appeal, ld. Departmental Representative supports the impugned order. He further relies on the ruling in the case of **Anand Steel Rolling Works Pvt. Ltd. Vs. Union of India – 2010 (258) ELT 218 (Gujarat),** wherein the facts were that the order-in-original was passed in the year 1991 confirming duty payable by M/s.Anand Steel. Subsequently, in the year 2008, an amount of Rs.3 lakhs was pre-deposited by the appellant in another proceedings was found liable to be refunded in the year 2008. The adjudicating authority adjusted the dues of 1991 from the refund amount. The said adjustment was upheld by the Commissioner (Appeals) and also by the Tribunal. Hon'ble High Court rejected the plea of M/s.Anand Steel that before recovery, they were not given any opportunity of hearing or representation. The High Court also held that recovery so made is in consonance with the Central Excise Act. Reliance was also placed on the following rulings:-

(1) ***Kohinoor Elastics Pvt. Ltd. -2006 (198) ELT 431 (T-Delhi)***
(2) ***Diamond Cement – 2009 (238) ELT 777 (Tribunal-Delhi)***
(3) ***TISCO Ltd. – 1990 (50) ELT 78 (Tribunal)***

10. Having considered the rival contentions, provisions of Section 11 are very clear, which provide –

> *"In respect of any duty and any other sum of any kind payable to the Central Government under any of the provisions of this Act or the rules made thereunder, including the amount required to be paid to the credit of the Central Government under section 11D, the officer empowered by the Board to levy such duty or require the payment of such sums may deduct or require any other central excise officer to deduct the amount so payable from any money owing to the person, from whom such sums is recovered or due, which may be in his hands or under his disposal or control, or may be in the hands or disposal or control of such other officer, or may recover the amount by adjustment or sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount recoverable from such person and send to the Collector of the district, in which such person resides or conducts his business for recovery as arrears of land Revenue. "*

11. From the provisions of Section 11 of the Central Excise Act, it is evident that the adjustment in the present case has been made *bonafide* as permissible under the provisions of the Act.

12. Accordingly, I find no merit in this appeal. Thus, the appeal is dismissed.

[Order pronounced on 07.10.2021.]

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)

Ckp.