CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.

PRINCIPAL BENCH,
COURT NO. I

EXCISE APPEAL NO. 55872 OF 2013

[Arising out of the Order-in-Appeal No. 75/CE/DLH/2012 dated 29/10/2012 passed by Commissioner (Appeals), Central Excise & Service Tax, Delhi – I, New Delhi.]

M/s Suneet Approtech (P) Ltd., **...Appellant**
2094/1, Gali No. 17, Prem Nagar,
New Delhi – 110 008.

Versus

Commissioner of Central Excise, **...Respondent**
Delhi – I,
C.R. Building, I.P. Estate,
New Delhi.

APPEARANCE:

None for the appellant.
Shri O.P. Bisht, authorized representative for the Department

CORAM:
HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NO. 51238/2022

DATE OF HEARING/DECISION : 09.12.2022

P.V. SUBBA RAO

M/s Suneet Approtech (P) Ltd.[1] filed this appeal to assail the order-in-appeal dated 29.10.2012 passed by the Commissioner (Appeals), New Delhi whereby he upheld the order of the lower authority dated 11.02.2011[2] and rejected the

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1 **appellant**
2 **impugned order**

appellant's appeal. This appeal was filed on 18 February 2013 and was listed before a learned Member for hearing on ten dates but the appellant had not appeared. Finally, by final order dated 04.01.2018, the learned Member decided the matter ex-parte on merits and dismissed the appeal. Thereafter, the appellant filed miscellaneous application No. 50975 of 2018 praying for recall of the Final order on the ground that the learned Member did not have jurisdiction to decide the appeal and it should have been listed before a Division Bench. By miscellaneous order No. 50614 of 2019 dated 09.09.2019, the miscellaneous application was allowed and the appeal was restored and directed to be listed before the Division Bench. Thereafter, it was listed before the Division Bench on 15.06.2022, 08.09.2022, 10.10.2022 and 25.11.2022 but the appellant did not appear. It has been listed today i.e., on 09.12.2022, but none appeared on behalf of the appellant.

2. We have heard Shri O.P. Bisht, learned authorized representative for the Department and perused the records and proceed to decide this appeal on merits.

3. The appellant was registered with the Central Excise Department and is engaged in manufacture of switch gears and light fittings, falling under Chapter 85 of the Central Excise Tariff. The appellant is a small scale industry and was, therefore, entitled to exemption Notification No. 8/2003-CE dated 01.03.2003 which exempts goods manufactured in a financial

year upto Rs. 1.50 crores. If the small scale industry manufactures goods in excess of this amount it is liable to pay central excise duty. Consequently, it is also eligible to avail the Cenvat credit on the inputs and input services used in manufacture of the final products.

4. Small scale industries, therefore, keep moving into the tax bracket and out of it. Once they cross the threshold in a financial year, they move into the tax bracket and are liable to pay central excise duty. When the next financial year begins, they move out of it and do not have to pay central excise duty until they cross the threshold during that financial year. Consequently, for the period during which they do not pay central excise duty they are also not eligible for Cenvat credit on the inputs and input services. On the day they move out of the tax bracket because a new financial year begins, they are required to reverse the Cenvat credit available in their records and the Cenvat credit on the inputs and work in progress.

5. The appellant's records were audited by the audit team of the Commissionerate and it was found that it availed exemption under Notification No. 8/2003-CE during 2007-2008, but ceased to be eligible for the exemption on 10.08.2007 when it opted for Cenvat facility. Condition 2 (iii) of the notification mandated THAT the manufacturer shall not avail Cenvat credit on inputs under Rule 3 or Rule 11 of the Cenvat Credit Rules[3], 2004 paid on inputs used in the manufacture of the specified goods cleared for

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[3] **CCR**

home consumption. On going through the appellant's sales ledger and sales invoices, the audit team found that the appellant had cleared finished excisable goods valued at Rs. 14,94,909/- without paying central excise duty even after it started taking Cenvat credit on the inputs. On being pointed out, the appellant voluntarily paid a duty of Rs. 2,46,361/- along with interest of Rs. 60,913/- on 07.07.2009.

6. Further, the audit found that the appellant had availed the benefit of SSI exemption during the years 2007-2008 and 2008-2009, but failed to reverse the Cenvat credit on the raw materials lying in stock, raw materials contained in the finished goods lying in stock and raw materials contained in the work in progress as on 31.03.2007 and 31.03.2008 as required under Rule 11 (2) of CCR, 2004. After investigating the matter further, a show cause notice[4] dated 05.01.2010 was issued to the appellant proposing to recover the wrongly availed Cenvat credit of Rs. 53,42,293/- under Rule 14 of CCR, 2004 read with section 11A of the Act along with interest. It was also proposed to impose a penalty on the appellant under Rule 25 of Central Excise Rules read with Rule 15 of CCR and section 11AC of the Central Excise Act[5].

7. After following due process, the Additional Commissioner passed the order-in-original dated 11.02.2011, the operative part of which is as follows :-

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4 **SCN**
5 **CEA**

"(i) Confirm the demand of Central Excise Duty including E. Cess collectively amounting to Rs. 13,42,293/- not so paid, leviable on goods manufactured and removed without payment of duty clandestinely and Cenvat credit not so reversed in terms of Rule 11 (2) of Cenvat Credit Rules, 2004 and Cenvat credit so taken wrongly in terms of Rule 3 of Cenvat Credit Rules, 2004 and order for recovery of the same from them under Section 11A (1) of the Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004.

(ii) Confirm the demand of Interest at appropriate rate on the demand of Central Excise duty confirmed above and order for recovery of the same from them under Section 11AB of Central Excise Act, 1944.

(iii) Order for appropriation of Central Excise Duty including E. Cess and Cenvat credit already paid/reversed voluntarily collectively amounting to Rs. 4,19,956/- and interest of Rs. 61,780/- already paid by them during investigation towards their duty & interest liability.

(iv) Impose a penalty of Rs. 13,42,293/- on M/s Suneet Aprotech (P) Ltd. under Rule 25 of Central Excise Rules, 2002 and Rule 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

8. On appeal by the appellant, the Commissioner (Appeals) upheld the above order by the impugned order. Hence this appeal on the following grounds :-

(i) The appellant was not required to reverse the Cenvat credit on inputs lying in stock as on 31.03.2007 and 31.03.2008 as per Rule 11 (2) of the CCR because the Cenvat credit was correctly availed by it and there is no one to one correlation between the inputs and the final products manufactured and cleared from the factory ;

(ii) The demand of Cenvat credit was barred by limitation ;

(iii) The demand of opening balance of Cenvat credit of Rs. 33,647/- as on 01.04.2007 and demand of opening balance of Cenvat credit of Rs. 1,10,588/- as on 01.04.2008 is time barred ;

(iv) The appellant was entitled to Cenvat credit of Rs. 26,503/- on the input which was purchased against invoice No. 41 dated 03.11.2007, which was denied to them on the ground that there was no entry confirmed the receipt of inputs ;

(v) The appellant was not liable to pay central excise duty of Rs. 2,46,361/- against central excise invoices No. 66 and 67 dated 27.08.2007 and 68, 69, 70 and 71 of dated 06.09.2007 because the appellant had cross the SSI exemption limit of Rs. 1.50 crores on 06.09.2007 and thereafter it had started paying duty on a clearances made from central excise invoice No. 72 dated 06.09.2007 onwards ;

(vi) The quantification of demand of reversal is not correct.

9. Learned authorized representative for the Department submitted as follows :-

(i) Exemption Notification No. 8/2003-CE provides exemption for clearances during any financial year made on after day of April upto a value not exceeding Rs. 150 lakhs subject to some conditions ;

(ii) Condition No. 2 (iii) of the notification reads as follows :-

> "That the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (hereinafter referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for hon e consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed one hundred and fifty lakh rupees".

(iii) Rule 11 (2) of CCR reads as follows :-

> "a manufacturer who opts for exemption from the whole of the duty of excise leviable on goods manufactured by him under a notification based on the value or quantity of clearances in a financial year, and who has been taking CENVAT credit on inputs or inputs services before such option is exercised, shall be required to pay an amount equivalent to the CENVAT credit, if any, allowed to him in respect of inputs lying in stock or in process or contained in final products lying in stock on the date when such-option is exercised and after deducting the said amount from the balance, if any, lying in his credit, the balance, if any, still remaining shall lapse and shall not be allowed to be utilized for payment of duty on any excisable goods, whether cleared for home consumption or for export".

(iv) During scrutiny of records, the appellant was found to have violated the provision of the exemption notification as well as the CCR which resulted in non-reversal of

Cenvat credit/non reversal of payment of duty as follows :-

(a) It cleared finished goods of Rs. 14,94,909/- involving of duty of Rs. 2,46,361/- after crossing the exemption limit of Rs. 1.50 crores on 06.09.2007. The appellant also taken Cenvat credit on the inputs lying in stock as on 06.09.2007. It is evident from the records in RG-23A part II of the appellant that it availed Cenvat credit on the inputs which have gone into clearance of the final products on 06.09.2007. Therefore, it was liable to pay central excise duty as it had not fulfilled condition No. 2 (iii) of the exemption notification ;

(b) The appellant availed Cenvat credit of Rs. 26,503/- in its RG-23A part II register, but there was no entry in RG-23A part I substantiated that the goods have been received and on being pointed out the appellant reversed the Cenvat credit voluntarily ;

(c) The appellant wrongly carried forward Cenvat credit balance of Rs. 1,44,235/- (Rs. 33,647/- as on 31.03.2007 and Rs. 1,10,588/- on 31.03.2008) in violation of Rule 11 (2) of the CCR ;

(d) The appellant failed to reversed Cenvat credit of Rs. 9,25,194/- in respect of the inputs lying in stock and contained in final products lying in stock before opting for SSI exemption notification.

10. In view of above, learned authorized representative prayed that the appeal may be dismissed.

11. Having considered the rival contentions, we find that it is undisputed that the appellant had availed the benefit of SSI exemption during the early part of the financial year and had at some stage crossed the limit and come into the bracket. On that day, the appellant was entitled to Cenvat credit and had to pay central excise duty. It needs to be pointed out that the exemption notification is subject to some conditions including the condition that the assessee does not avail Cenvat credit on the inputs and input services. Further as per Rule 11 (2) of CCR, if an

assessee moves from paying tax to SSI exemption during the next financial year the assessee is required to reverse the Cenvat credit on the inputs and input services. Therefore, we do not agree with the assessee that it was not required to reverse the Cenvat credit on the inputs lying in stock as on 31.03.2007 and 31.03.2008 because it is bound by Rule 11 (2) of the CCR which requires such reversal. The appellant’s contention that the demand of Cenvat credit on the inputs lying in stock is barred by limitation and similarly the demand on opening balance of Cenvat credit is also barred by limitation cannot be accepted for the simple reason that once the appellant moves opt of the tax bracket in the new financial year no further returns are required to be filed by the appellant with the Department until it re-enters the tax bracket after crossing the threshold. Therefore, there is no way the Department can learn about the activities of the appellant. It is for the appellant which has availed the benefit of SSI exemption notification to ensure that it fulfills all the conditions of the notification.

12. Another submission of the appellant was that it was entitled to the benefit of Cenvat credit of Rs. 26,503/- which was purchased by it against invoice No. 41 dated 03.11.2007. It also cannot be accepted for the reason that the audit of the record showed that the appellant had not received the goods. The contention of the appellant that it was not liable to pay central excise duty amounting to Rs. 2,46,361/- on five invoices dated 27.08.2007 and 06.09.2007 also cannot be accepted for the

reason once the appellant started availing Cenvat credit, it no longer fulfills the conditions of the exemption Notification No. 8/2003-CE and, therefore, it was liable to pay central excise duty even if it was falling below the threshold limit of Rs. 1.50 crores turnover. Consequently we find no force in the appeal and accordingly we uphold the impugned order and dismiss the appeal.

(Order dictated and pronounced in open court.)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

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