CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH COURT NO.II

EXCISE APPEAL NO. 52288 OF 2021

[Arising out of Order-in-Appeal No. DDN/EXCUS/000/APP/18/2021-22 dated 30.06.2021 passed by the Commissioner (Appeals) CGST, Dehradun]

M/S. RSPL Limited
Plot No. 3A, 6 & 7, Sector 03
IIE SIDCUL,
Haridwar 249 403.

APPELLANT

Vs.

THE ADDITIONAL COMMISSIONER,
CENTRAL GOODS AND SERVICE TAX,
Commissionerate, E Block, Nehru Colony
Dehradun 248001.

RESPONDENT

Appearance:
Shri Rajesh Gupta, Chartered Accountant for the Appellant
Shri Sanjay Kumar Singh, Authorised Representative for the Respondent

CORAM:
HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI C. L. MAHAR, MEMBER(TECHNICAL)

DATE OF HEARING : March 31, 2023
DATE OF DECISION : March 31, 2023

Final Order No. 50505 /2023

PER ASHOK JINDAL

The appellant is in appeal against the impugned order wherein Cenvat credit availed by the appellant during the period from 12.4.2016 to 31.3.2017 on capital goods was denied in terms of Notification No. 13/2016-CE(NT) dated 01.03.2016.

2. The facts of the case are that the appellant is located in the state of Uttarakhand and availing the benefit of exemption notification no. 50/2003 (CE) dated 10.6.2003. the appellant filed the declaration on 20.8.2007 regarding their manufactured product, namely, distilled

glycerin was in dispute and the Revenue was of the view that the said product is dutiable. Therefore, the proceedings were initiated against the appellant for demand of duty on distilled glycerin. The appellant paid duty thereon till 30.6.2015. Later on as advised by their Consultant, the appellant contested the issue that they are not liable to pay duty on distilled glycerin and started paying duty under protest and protest was made on 29.06.2015 i.e. evident from record. During the period 2016-2017, the appellant procured certain capital goods and issue of paying duty was under dispute. The duty payable on distilled glycerin was under dispute. The appellant took Cenvat credit on these capital goods on protective measures as they were required to take Cenvat credit on capital goods before GST regime which started on 01.07.2017. As the appellant took the said Cenvat credit, the Revenue is of the view that as appellant is contesting the dutibility of distilled glycerin, therefore, the capital goods used for manufacturing distilled glycerin and other products against which they are availing the exemption under Notification No.50/2003 (CE) dated 10.06.2003, the appellant is not entitled to take Cenvat credit on capital goods. In these set of facts, a show cause notice was issued to deny the Cenvat credit on capital goods to the appellant in terms of Notification No. 13/2016 dated 01.03.2016. The matter was adjudicated and denial of Cenvat credit was confirmed. The said order was challenged before learned Commissioner (Appeals). During the pendency of appeal before learned Commissioner, Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 came into operation. The Appellant opted for the scheme and paid duty accordingly and removed their protest against dutiability of distilled glycerin. But the learned Commissioner (Appeals) held that the appellant is manufacturing exclusively exempted goods and availing the benefit of Notification 50/2003-CE dated 10.06.2003 during the impugned period, therefore, they are not entitled to take the Cenvat Credit on these capital goods. Against the said order, the appellant is before us.

3. Learned Counsel appearing on behalf of the appellant submits that since 2008, they were paying the duty on distilled glycerin and the same has been accepted by the Department as for manufacturing of distilled glycerin, they are not entitled for benefit of exemption Notification No. 50/2003 (CE) dated 10.06.2003. Therefore, they were not manufacturing exclusively exempted goods. In that circumstances, they have rightly taken the Cenvat credit.

4. On the other hand, learned Authorised Representative opposing the contention of the learned counsel of the appellant and submits that as appellant was paying the duty under protest, that distilled glycerin is not a dutiable product, therefore, they were manufacturing exclusively exempted goods, in that circumstances, lower authorities rightly denied the Cenvat credit on capital goods.

5. Heard the parties and considered the submissions.

6. On hearing both the sides and perusal of records, the only issue emerges is whether the appellants are manufacturing exclusively exempted goods or not during the impugned period by availing the benefit of Exemption Notification No. 50/2003 (CE) dated 10.06.2003.

7. To deal with the issue, we find that it is a fact on record on distilled glycerin the appellant was paying the duty. The Department has accepted the same and during the impugned period, the appellant opted for Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and settled the issue by paying the duty which was accepted . In the circumstances, it cannot be said that appellant had manufactured exclusively exempted goods during the impugned order.

8. In that circumstances, we hold that the appellant was manufacturing dutiable as well as exempted goods during the impugned period when they availed the Cenvat credit on capital goods which has been used for manufacture of both dutiable as well as exempted goods. In that circumstances, we allow the Cenvat credit availed by the appellant on the impugned capital goods.

9. In view of this, we did not find any merit in the impugned order, therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(ASHOK JINDAL)
MEMBER (JUDICIAL)

(C. L. MAHAR)
MEMBER (TECHNICAL)

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