CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH-COURT NO. 1

EXCISE APPEAL NO. 50087 OF 2022

[Arising out of Order-in-Appeal No. 291(CRM) CE/JDR/2021 dated 28.9.2021 passed by the Commissioner (Appeals), Central Excise & Central Goods and Service Tax, Jodhpur]

Commissioner of Central Excise &
Central Goods and Services Tax,
Udaipur **......Appellant**
142-B, Hiran Magri, Sector-11,
Udaipur-313001 (Raj)

Versus

M/S Dynamic Engineers, **......Respondent**
E-20, Chambal Industrial Area,
Opposite Multimetals, Kota (Rajasthan)

Appearance:
Present for the Appellant: Shri Unmesh Kumar, Authorised Representative
Present for the Respondent: Shri Alok Yadav, Advocate

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

FINAL ORDER NO. 51156 /2023

DATE OF HEARING: 16.08.2023
DATE OF DECISION: 30.08.2023

P V SUBBA RAO:

Revenue filed this appeal to assail the Order in Appeal[1] dated September 28, 2021 passed by the Commissioner (Appeals) Jodhpur whereby he allowed the Respondent's appeal and set aside the order in original[2] dated 17.3.2021 passed by the Additional Commissioner, Udaipur.

---

1 Impugned order
2 OIO

2. The Respondent manufactures Glued Insulated Rail Joints and steel girders. It had availed the benefit of exemption Notification No. 8/2003-CE dated 1.3.2003 which exempted goods manufactured by small scale industries from the whole of duty upto a value of clearance of one hundred and fifty lakhs subject to some conditions including conditions no. (iii) and (iv) which read as follows:

(iii) the manufacturer shall not avail the credit of duty on inputs under rule 3 or rule 11 of the CENVAT Credit Rules, 2002 (herein after referred to as the said rules), paid on inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed rupees one hundred lakhs;

(iv) the manufacturer also does not utilise the credit of duty on capital goods under rule 3 or rule 11 of the said rules, paid on capital goods, for payment of duty, if any, on the aforesaid clearances, the aggregate value of first clearances of which does not exceed rupees one hundred lakhs, as calculated in the manner specified in the said Table;

3. The CENVAT Credit Rules, 2002 were later replaced by CENVAT Credit Rules, 2004 but they were similarly worded. During scrutiny of the excise returns filed by the respondent in ER-3 for the period April 2016 to March 2017, it appeared that the respondent had availed the benefit of the exemption notification no. 8/2003-CE dated 1.3.2003 and had also taken CENVAT credit on the inputs used for manufacture of the final

products. Accordingly, a Show Cause Notice[3] dated 28.5.2020 was issued by the Additional Commissioner calling upon the respondent as to why:

(i) CENVAT credit amounting to Rs. 62,49,255/- should not be disallowed and recovered from them under Rule 14 of the CENVAT Credit Rules, 2004[4] read with section 11A (4) of the Central Excise Act, 1944[5];

(ii) Interest on above referred inadmissible Cenvat Credit should not be recovered from them under Rule 14 of the CCR read with Section 11AA of the Act;

(iii) Penalty under Rule 15(2) of the CCR read with Section 11AC should not be imposed upon them.

4. The respondent contested the proposals in the SCN but the Additional Commissioner confirmed them in the OIO dated 17.3.2021. Aggrieved, the respondent appealed to the Commissioner (Appeals) who, by the impugned order, set aside the OIO. His findings were as follows:

a) The assessee (respondent herein) manufactured two types of products- Glued insulant Rail Joints (inputs for manufacture of which are fish plates, fibre glass fabric and some other items) and Steel Girders (inputs for manufacture of which are MS Plate.

---

3 **SCN**
4 **CCR**
5 **Act**

b) The assessee took CENVAT credit only on MS Plates, i.e., the inputs which were used in manufacturing Steel girders and it had not cleared the steel girders for home consumption during 2016-17 when it availed the benefit of the exemption notification.

c) The assessee cleared steel girders for home consumption after 1.4.2017 in which year it had not availed the benefit of the exemption notification.

d) Even though the assessee had cleared the steel girders for home consumption only in 2017-18 when it had not availed the benefit of the exemption notification, **the adjudicating authority had disallowed CENVAT credit on the MS plates for the reason that the assessee had planned in 2016-17 (while availing the benefit of the notification) to clear the goods during 2017-18**.

e) This disallowance of CENVAT Credit by the adjudicating authority is not correct because the restriction in the notification is only availing credit of duty paid on inputs used in the manufacture of specified goods cleared for home consumption.

5. Revenue filed this appeal assailing the impugned order on the following grounds:

(a) Condition no. 2(iii) of the notification no. 8/2003-CE dated 1.3.2003 (wrongly mentioned in the appeal as 8/2003 -CE (NT) dated 1.3.2003 although it is a tariff notification and not an NT or non-tariff notification) provides that:

> "the manufacturer shall not avail the credit of duty paid on inputs under Rule 3 or Rule 11 of CCR paid on the inputs used in the manufacture of the specified goods cleared for home consumption, the aggregate value of first clearances of which, as calculated in the manner specified in the Table does not exceed one hundred and fifty lakh rupees."

(b) As per the notification, small-scale industry units have the following options:

(i) Avail full exemption upto Rs. 150 lakhs and pay normal duty thereafter and avail CENVAT credit on inputs after crossing exemption limit of turnover of Rs. 150 lakhs in the financial year; or

(ii) Not avail the exemption and pay the normal rate of duty and avail CENVAT credit;

The second option is available anytime during the year but once availed it cannot be withdrawn during the financial year;

(c) The assessee had taken CENVAT credit on the inputs from the beginning of the financial year, i.e., from 20.3.2016 but did not show in the ER-1 return that it was manufacturing Steel girders but showed them only in the return for the last quarter. **Therefore, the appellate authority erred in allowing the benefit of the exemption notification.**

(d) The appellate authority simultaneously allowed the benefit of the exemption notification and allowed the benefit of CENVAT credit in violation of the conditions of the exemption notification.

(e) The appellate authority travelled beyond the scope of the notification for its implementation wrongly. The words of Act or law or notification must be strictly interpreted.

(f) The assessee stated in its submission made on 25.1.2021 that it had used inputs in the manufacture of the Steel girders during 2016-17 but had not cleared them during that financial year but it had shown the production of the steel girders only in the last quarter of that financial year.

(g) The Commissioner (Appeals) incorrectly relied on the Board's circular No. 38/88 dated 8.8.1988 which covered cases where both dutiable and exempted products were manufactured by an SSI. In this case, all the products manufactured by the respondent were dutiable but for the SSI exemption.

6. Reiterating the above, learned authorised representative prayed that the appeal may be allowed and the impugned order may be set aside. Learned counsel for the respondent supports the impugned order.

7. We have considered the submissions on both sides.

8. The case of the Revenue in the SCN was that the respondent had violated condition no. 2 (iii) the Notification no. 8/2003-CE

which exempts goods manufactured by the SSI units up to a value of one hundred and fifty lakhs during a financial year from the whole of duty of excise subject to some conditions. The proposal in the SCN was to deny the benefit of CENVAT credit availed by the respondent and recover it under Rule 14 of CCR. In other words, the proposal in the SCN is to compel the respondent to fulfil the conditions in the exemption notification which it had allegedly not fulfilled. This proposal itself cannot be sustained. Exemption notifications are an exception to the general rule that duty must be paid. They can be conditional or unconditional. If they are conditional and if the assessee fulfils the conditions, it can avail the benefit of the exemption notification. If it does not, the exemption notification will not be available to it and the duty will have to be charged as applicable without the benefit of the exemption notification. However, there is no law under which an assessee can be compelled to fulfil the conditions of an exemption notification as was proposed in the SCN in this case. For this reason alone, the proposal to deny the CENVAT credit to the respondent and recover it under Rule 14 of CCR read with section 11A is not sustainable because nothing in the CCR requires the respondent to fulfil the conditions of this or any other exemption notification. The respondent had opted for it and could enjoy it if it had fulfilled its conditions and not otherwise. If Revenue was of the opinion that the respondent had not fulfilled the conditions of the notification, it could have issued a notice seeking to deny the benefit of the notification and recover the consequential differential duty. There is no such proposal in the SCN. The proposal in the SCN to deny the CENVAT credit and recover it under Rule 14 of CCR read with Section 11A, cannot therefore, be sustained.

9. Much emphasis was laid in this appeal by the Revenue that exemption notifications must be strictly interpreted as they were written. We agree. The exemption notification and the conditions therein must be read as they are. Nothing more or less. The condition alleged to have been violated reads as follows:

Condition No. (iii)

The manufacturer **shall not avail the credit of duty on inputs** under rule 3 or rule 11 of CENVAT credit Rules, 2002 (herein referred to as the said rules), **paid on inputs used in the manufacture of the specified goods cleared for home consumption,** the aggregate value of first clearances of which, as calculated in the manner specified in the said Table does not exceed rupees one hundred lakhs [the CENVAT Credit Rules, 2002 were subsequently replaced by CCR, 2004 which have similar provisions; the value of one hundred lakhs was revised to one hundred and fifty lakhs].

10. In this appeal, the alleged violation is of taking CENVAT credit on inputs which the respondent is alleged to have used in the manufacture of steel girders during 2016-17 (when it had availed the benefit of the notification) but which it cleared for home consumption during 2017-18 (when it had not availed the benefit of the notification). Condition no. (iii) of the notification only prohibits taking of CENVAT credit on the inputs used in the manufacture of the goods cleared for home consumption. The

Steel girders were not cleared for home consumption during 2016-17 when the appellant had availed the benefit of the exemption notification. They were cleared during 2017-18 when the appellant had not availed the benefit of the notification.

11. The conditions of the notification must be, as asserted by the Revenue, strictly interpreted and it is not open to the Revenue to read 'goods cleared for home consumption' in the notification as 'goods manufactured for home consumption'. The original authority rejected this defence of the respondent on the ground that the appellant had shown the manufacture of Steel girders only in the last quarter of 2016-17 but had availed CENVAT credit on the inputs used in their manufacture during the period prior to this quarter. If it was felt that there were errors in the excise returns of the respondent, a notice could have been issued to seek explanation and if necessary, action could have been taken but the Revenue cannot modify the condition (iii) of the notification when applying it to the respondent and thereby deny its benefit.

12. For all these reasons, we find no infirmity in the impugned order of the Commissioner (Appeals) setting aside the order of the lower authority. The impugned order is upheld and revenue's appeal is dismissed.

[Order pronounced on **30.08.2023**]

(JUSTICE DILIP GUPTA)
PRESIDENT

(P V SUBBA RAO)
MEMBER (TECHNICAL)

Tejo