CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI.
PRINCIPAL BENCH – COURT NO.III

Excise Appeal No.51677 of 2019 (DB)

[Arising out of Order-in-Appeal No.IND-EXCUS-000-APP-161-162/18-19 dated 14.06.2018 passed by the Commissioner (Appeals), Customs, CGST & Central Excise, Indore (M.P.)]

M/s. K.K. Spun India Ltd. **Appellant**
10th Floor, Tower A, Vatika Mindsape,
12/3, Sarai Khwaja, Mathura Road,
Sector-27, Faridabad-121 003.

Versus

Commissioner of Central Goods & Service Tax & Central Excise, **Respondent**
Indore (M.P.).

AND

Excise Appeal No.51678 of 2019 (DB)

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Commissioner of Central Goods & Service Tax & Central Excise, **Respondent**
Indore (M.P.).

APPEARANCE:

Shri Kamal Jeet Singh, Advocates for the assessees.
Shri Manish Kumar Chawda, Authorised Representative for the Revenue.

CORAM:

HON'BLE MS. BINU TAMTA, MEMBER (JUDICIAL)
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

FINAL ORDER NOs.50118-50119/2024

DATE OF HEARING :28.11.2023
DATE OF DECISION:25.01.2024

BINU TAMTA:

1. The appellant has assailed the Order-in-Appeal No.IND-EXCUS-000-APP-161-162-18-19 dated 14.06.2018, whereby the Commissioner (Appeals) affirmed the demand in terms of the show cause notices.

2. The appellant having Central Excise Registration is engaged in the manufacture of RCC Pipes taxable under Chapter Heading 68109990 of CETA in its units located at various places. The RCC Pipes are not exempted as such, however, if the same are used for certain projects, they are eligible for exemption. Here the appellant was awarded the work of “Khan River Diversion Project” by Water Resources Department, Government of Madhya Pradesh for the purpose of irrigation of land. As the said activity was covered under Notification No.12/2012-CE dated 17.03.2012, the appellant was eligible for exemption from payment of central excise duty subject to fulfillment of the conditions specified therein on the clearance of finished goods i.e. RCC Pipes. The appellant having complied with the conditions have availed the benefit of the exemption while clearing the finished goods.

3. Show cause notices dated 21.04.2017 and 19.06.2017 was issued for the period 2015-2016 to 2016-2017 and 10/2016 to 03/2017 respectively, alleging that in terms of Rule 6(4) of the Cenvat Credit Rules, 2004 (hereinafter referred to as the Rules) the appellant was not entitle to avail the Cenvat Credit on Capital Goods as they were availing the benefit of the exemption notification on the clearance of their final product i.e., RCC Pipes. Therefore, they wrongly availed Cenvat Credit on Capital Goods of Rs.1,43,41,522/- and Rs. 25,43,934/- which was sought to be disallowed and recovered along with interest and penalty. On adjudication, the show cause notice was affirmed vide Order-in-Original dated 11.12.2017 and the appeal filed by the appellant was rejected by the impugned order.

4. The main contention of the learned Counsel for the appellant is that the benefit of exemption from payment of excise duty under the notification is subject to the compliance of the conditions prescribed in the notification and once the final products were being cleared without payment of excise duty, they had not utilised the Cenvat Credit. The learned Counsel placed reliance on the decisions of the Apex Court in **Chandrapur Magnet Wires P. Ltd vs Collector of Central Excise, Nagpur – 1996 (81) ELT 3 (SC), Commissioner of Central Excise vs. Bombay Dyeing & Mfg. Co. Ltd. - 2007 (215) ELT 3 (SC)** and also a decision of this Tribunal in their own case

decided by **Final Order No.50597/2022 dated 12.07.2022**. The learned Counsel has also challenged the invocation of the extended period of limitation as there was no allegation of fraud, mis-statement, suppression etc. with intention to evade payment of excise duty for the simple reason that the final products were being cleared under the exemption notification. The learned Authorised Representative for the Revenue relying on the provisions of Rule 6(4) of the Rules stated that no Cenvat credit can be allowed on the capital goods which are exclusively used for the manufacture of exempted goods and reiterated the findings of the Authorities below.

5. We have heard Shri Kamaljeet Singh, Advocate for the appellant and Shri Manish Kumar Chawda, Authorised Representative for the Department and have also examined the records of the case. The short questions for our consideration are :

> **"(i)** whether the appellant is entitle to reverse the Cenvat Credit on the final goods being cleared without payment of duty.
>
> **(ii)** If the answer to the above question is in positive whether the impugned order and the show cause notice is sustainable."

6. The appellant in his reply to the show cause notice as well as in the memo of appeal has very elaborately explained that the capital goods were to be used in the manufacture of RCC Pipes which were dutiable and were cleared at 'Nil' rate of duty only by virtue of complying with the conditions under the exemption notification. On perusal of the notification, we find that the exemption from payment of duty is conditional, as Condition No.23 of the notification reads:

> **"23.** If a certificate issued by the Collector or District Magistrate or Deputy Commissioner of the district in which the plant is located, is produced to the Deputy Commissioner of Central Excise or the Assistant Commissioner of Central Excise, as the case may be, having jurisdiction to the effect that such goods are cleared for the intended used specified in Column (3) of the table."

In terms of the above condition, the assessee will have to apply for a certificate from the concerned authority, certifying the intended use of such goods and if for any reason, the assessee fails to produce the said certificate before the authorities, the duty liability would accrue. Therefore, unless and until the goods are cleared without payment of excise duty, the assessee is not sure that they are entitle to the exemption of duty as otherwise the final product, RCC pipes are taxable. Once the goods are cleared availing the benefit of the exemption, the appellant had reversed the Cenvat Credit by not utilising the same. Logically, the availment of credit is not of any significance, if it is not to be utilised and if it can be utilised, the availment of Cenvat credit gets justified. We do not find any error in the procedure adopted by the appellant.

7. We may now examine the decisions of the Apex Court in the case of **Chandrapur Magnet Wires** (supra), where the contention raised by the department was that the assessee is not entitle to reverse the entries and get the benefit of the tax exemption. Referring to the Circular issued by the Ministry of Finance, the Court observed that where the manufacturer produces dutiable final products and also final products which are exempted from duty and it is not reasonably possible to segregate inputs utilised and manufacture the dutiable final products from the final products which are exempted from duty, in such a case, the manufacturer may take credit of duty paid on all the inputs used in the manufacture of final products on which duty will have to be paid. This can be done, only if the credit of duty paid on the inputs used in the exempted products is debited in the credit account before the removal of the exempted final products. Accordingly, the Court concluded :-

> **"7.** In view of the aforesaid clarification by the Department, we see no reason why the assessee cannot make a debit entry in the credit account before removal of the exempted final product. If this debit entry is permissible to be made, credit entry for the duties paid on the inputs utilised in manufacture of the final exempted product will stand deleted in the accounts of the assessee. In such a situation, it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of the final exempted product under Rule 57A. In other words, the claim for exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of the duty paid on the inputs used in manufacture of these goods."

8. Similarly, in the case of **Bombay Dyeing & Manufacturing Company Ltd.** (supra), the contention of the assessee was that they had reversed the Cenvat credit and had not taken credit on account of such reversal and further clarified that whenever duty is paid on the input yarn, the assessee is entitle to credit under the Credit Rules, 2002. However, availment of credit takes place later on when the assessee makes

adjustment of duty paid on input against duty paid on final product (fabrics). Considering the contents of the notification that exemption on grey fabrics was admissible subject to the assessee paying the duty on yarn before claiming exemption and subject to the assessee not claiming Cenvat Credit before claiming exemption and the question of exemption from payment of duty on grey fabrics arose on satisfaction of the said conditions and, therefore, the payment of duty on deferred basis took place before clearance of grey fabrics on which exemption was claimed. Therefore, payment was made before the stage of exemption and similarly on payment of duty on the input the assessee got the credit which was never utilised. The Court accordingly, concluded that before utilization, the entry has been reversed, which amounts to not taking credit.

9. Reliance has also been placed by the appellant on the order passed in their own case titled as **M/s. K. K. Spun India Ltd. versus C.C.EX, Indore** (supra), where the appellant had availed the credit on receipt of capital goods during the period April to June 2017 of Rs.46,85,471/- and the appeal was allowed in view of the categorical statement made by the appellant that there is no utilisation of such cenvat credit for removal of the final goods.

10. From the aforesaid decisions, it is undoubtedly clear that the appellant is entitled to reverse the Cenvat Credit and in that event it would amount to not taking the credit. Consequently, no proceedings can be initiated for disallowing the same or seeking to recover the said amount as after the clearance of the final goods on exemption there would be no entry showing availment of the credit. The Authorities below have failed to appreciate the fine distinction drawn by the Apex Court in the above decisions taking a practical approach while dealing with a situation arising as a result of the exemption notification and availment of Cenvat Credit by a party, which is reversed.

11. CBEC’s Circular No.858/16/2007 – CX dated 8.11.2007 clarifying that if credit taken is reversed, before utilisation, it would amount to Credit not having been taken. It is a settled principle of law that the Circular issued by the Board are binding on the department. Thus the appellant having reversed the credit before its utilisation, it is a case covered by the circular as well as by the decisions of the Apex Court.

12. Since we have allowed the appeals on merits, the issue of invocation of extended period of limitation, interest and penalty does not survive.

13. The impugned order therefore deserves to be set aside. The present appeals are accordingly allowed.

[Order pronounced on 25th January, 2024]

(Binu Tamta)
Member (Judicial)

(P. V. Subba Rao)
Member (Technical)

Ckp.