IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.
Principal Bench, New Delhi

COURT NO. IV

DATE OF HEARING : 16/05/2017.
DATE OF DECISION : 16/05/2017.

Excise Appeal No. 56246 of 2013 (SM)

[Arising out of the Order-in-Appeal No. 55 (RDN)/CE/JPR-II/2012 dated 10/10/2012 passed by The Commissioner, Customs & Central Excise, Jaipur.]

M/s P.I. Industries Ltd. Appellant

Versus

CCE & ST, Jaipur – II Respondent

Appearance

Shri Vijayan Khongal, C.S. – for the appellant.

Shri K. Poddar, Authorized Representative (DR) – for the Respondent.

CORAM : **Hon'ble Shri B. Ravichandran, Member (Technical)**

Final Order No. 53361/2017 Dated : 16/05/2017

Per. B. Ravichandran :-

The appellant is aggrieved only by imposition of penalty by the lower Authorities and are not contesting the case on merits. The brief facts of the case are that the appellants are engaged in the manufacture of pesticides liable to Central Excise duty. During the period February 2007 to March 2009 they have received duty paid final products back into their factory. They have taken credit of duty already discharged on such product, in their cenvat account. Since, the duty paid products brought back by the appellants were time expired products in terms of Pesticides Rule 1971 and cannot be put to reprocessing, the credit availed in terms of Rule 16 of Central Excise Rules, 2002 was sought to be denied to the appellant. The appellants on being pointed out of their ineligibility to credit on the returned product, reversed the full credit amount alongwith applicable interest and intimated the Department. The amount was reversed in July and November 2009. However, a show cause notice dated 26/04/2010 was issued to the appellant, to demand and recover the said ineligible credit and to appropriate the credit already reversed, alongwith proposal to impose penalty under Section 11AC readwith Rule 15 of Cenvat Credit Rules, 2004. The lower Authorities confirmed the proposals in the notice.

2. The learned Counsel submitted that the credit availed on returned goods have been reversed with interest, on being pointed out by the Department. They are not contesting the said reversal. Since, the full amount of credit, found to be ineligible under the terms of Rule 16 of Central Excise Rules, 2002 was paid back, the matter should have been closed in terms of Section 11 (2B) of the Act. The credit availed were duly recorded in their RG-23A register and also reflected in the monthly ER-1 returns filed with the Department. Hence, there can be no allegation of fraudulent intend or suppression of fact against them.

3. The learned AR submitted that the appellants have been availing such irregular credit for quite sometime and it is only after detailed investigation by the Revenue, the ineligibility of credit under Rule 16 was revealed. The penal proceedings are correctly invoked against the appellant.

4. I have heard both the sides and perused the appeal records. The appellants took credit of duty paid by them on the finished goods which were returned back to them. There is no dispute regarding duty paid nature of the returned goods. The only point is that such returned goods cannot be put to further process as they are already past their expiry date. As such, the credit availed by the appellant in terms of Rule 16 is not correct. Admittedly, the appellants cannot reprocess the returned goods due to statutory regulations governing pesticides. Admittedly, further, the Cenvat credit on such goods have been duly entered into in the records of the appellant and formed part of the credit statement in the ER-1 filed by the appellants. In such situation, there can be no allegation of suppression or fraud in availing the credit, on their own returned goods on which they have discharged originally the central excise duty. Considering that the full reversal of ineligible credit alongwith interest has been made by the appellant well before the issue of notice, I find that the case could have been closed without issue of notice. The period of availment of irregular credit being longer than one year by itself will not bar the closure of the proceedings. For the bar to

operate the ingredients of proviso to Section 11A (1) should be found to be existing. As noted also, in the present case such ingredients are missing. As such, while upholding the reversal of credit with interest, I find no further proceedings are required. As such, the penalty imposed on the appellant are set aside. The appeal is allowed to that limited extent only.

(Dictated and pronounced in open court)

(B. Ravichandran)
Member (Technical)

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