CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL REGIONAL BENCH AT HYDERABAD

Division Bench

Court – I

Excise Appeal No. 1283 of 2012

(Arising out of OIO No.VIZ-CEX-001-COM-017-12 dt.27.01.2012 passed by Commissioner of Central Excise & Customs, Visakhapatnam-I)

Aurobindo Pharma Ltd
Plot No.2, Maitrivihar,
Ameerpet, Hyderabad – 500 038

......Appellant

VERSUS

Commissioner of Central Tax
Visakhapatnam - I
Port Area, Visakhapatnam,
Andhra Pradesh – 530 035

......Respondent

Appearance

Shri N. Ram Reddy, Advocate for the Appellant.
Shri B. Sangameshwar Rao, AR for the Respondent.

Coram:

HON'BLE MR. R. MURALIDHAR (JUDICIAL)
HON'BLE MR. A.K. JYOTISHI, MEMBER (TECHNICAL)

FINAL ORDER No. A/30283/2023

Date of Hearing: 13.09.2023
Date of Decision: 13.09.2023

[Order per: R. MURALIDHAR]

The Appellants were issued four Show Cause Notices seeking reversal of Cenvat credit as per the following table:

S.No.	SCN No.	Date	Period	Amount
1	V/15/43/2008-Adj	08.04.2008	04.2007 to 11.2007	9,51,26,759/-
2	V/15/201/08-Adj	02.01.2009	12.2007 to 10.2008	9,19,74,349/-
3	V/15/209/2009-Adj	03.12.2009	11.2008 to 10.2009	5,08,33,141/-
4	V/15/208/2010-Adj	06.12.2010	11.2009 to 10.2010	5,97,71,546/-

2. Earlier on similar issue, the matter had reached the Tribunal, wherein, Final Order No. 1552/2010 dated 21.12.2010 was passed. In that Order, it has been clearly held that there is no need to reverse any Cenvat credit when the

exempted goods are cleared or exported to EOU or to SEZ. The Adjudicating Authority, relying on this decision, passed OIO No. VIZ-CEX-001-COM-017-12 dated 27.01.2012, wherein, he dropped the demand of Rs.27,08,36,663/- and Rs.3,11,68,258/-. The Department is not aggrieved by the same and no Appeal has been filed by the Revenue against this OIO. In the OIO, he has also noted that in respect of inputs cleared as such, the Appellant has reversed Cenvat credit of Rs.29,61,191/- and has appropriated the same. However, he has demanded the interest on this amount. Apart from this, he has also noted that the Appellant has reversed Rs.15,59,640/- on account of ineligible Cenvat credit, wherein, the inputs have been used exclusively in the manufacture of exempted goods. However, he has not appropriated the same. Further, he has held that the Appellants have not reversed the Cenvat credit of Rs.74,64,464/- on account of Cenvat credit taken on one input viz., Tri Ethyl Amine, which is used in the production of both dutiable and exempted goods.

3. To summarize the confirmed demand in the OIO:

a) Interest on amount of Rs.29,61,191/- already reversed by the Appellant.
b) Reversal of Rs.15,59,640/- on account of inputs used exclusively along with interest thereon.
c) Demand of Rs.74,64,464/- to be reversed on account of usage of Tri Ethyl Amine as a common input for both dutiable and exempted finished goods.

4. Being agitated, the Appellants are before the Tribunal.

5. The Appellant submits that in case of already reversed amount of Rs.29,61,191/-, they are not contesting this amount which has been already appropriated in the OIO. They also point out that on this amount, they have already paid interest of Rs.1,47,209/-. They draw out attention to Page No.92 of the Appeal book.

6. In respect of Rs.15,59,640/-, they submit that even after noting that they have already reversed this amount, still the Adjudicating Authority has not appropriated the same. They submit that they are not required to pay interest on the same as they were always carrying much more balance in their Cenvat credit account.

7. In respect of confirmed demand of Rs.74,64,464/- on account of Tri Ethyl Amine, they submit that they have been paying 10% duty when the exempted goods were cleared. The confirmed amount form parts of the overall duty

demand made under the four SCNs referred above. They submit that the Adjudicating Authority while dropping the demands on various amounts failed to consider that they have been paying the Excise Duty @8%/ 10% when the exempted goods were cleared. This meets the requirement under Rule 6(3) (b) of the CCR, 2004. Therefore, once again demanding this amount would amount to double taxation. In view of the submissions, they pray that the Appeal may be allowed.

8. The learned AR reiterates the findings of the Lower Authority. He also submits the synopsis pertaining to the facts of this case.

9. Heard both sides and perused the documents.

10. On going through the synopsis filed by the learned AR, it is seen that in respect of Rs.15,59,640/-, the Revenue is admitting that the amount has already been paid but insisting that the interest is required to be paid on this amount. In respect of Rs.29,61,191/- already reversed by the Appellant, Revenue admits that interest of Rs.1,47,209/- has already been paid. The interest amount paid is not being disputed on account of any quantification.

11. In respect of Rs.74,64,464/-, the AR's Office has queried the details from the Jurisdictional Commissioner to get it verified as to whether 10% of the value of the clearance of the exempted goods was being paid by the Appellant, as claimed by them. They have received letter dated 21.06.2013 from the Office of the Commissioner, Visakhapatnam, stating that the Assessee has reversed 10% of the value of clearances. This letter has been annexed with the synopsis submitted by the Revenue.

12. Considering the above facts and documentary details given, it is seen that in respect of the interest of Rs.29,61,191/-, the same stands paid by the Appellant. Since the Appellant has not brought in any evidence to the effect that they were carrying sufficient balance, we reject their submission that interest is not required to be paid. The interest of Rs.1,47,209/- paid by them meets the requirement of interest as demanded in the OIO.

13. Similarly, in respect of Rs.15,59,640/-, since the AR's Office has received confirmation about payment of the same and the Appellant is not contesting the same, no Appeal lies from the Appellant's side on this count. However, they are required to pay the interest on this amount.

14. In respect of confirmed demand of Rs.74,64,464/- in respect of Tri Ethyl Amine, the Appellant has claimed that for all the clearances of exempted goods in DTA, they have paid 10% amount. This fact has been verified by the Revenue and the Jurisdictional Authorities have confirmed that this is correct. Therefore, once the Appellant pays the 10% amount on the clearance of exempted goods, the demand of Rs.74,64,464/- would amount to once again demanding reversal of the Cenvat credit which is legally not permissible. Therefore, we allow the Appeal to the extent that the confirmed demand of Rs.74,64,464/- is set aside.

15. Since the issues involved are that of interpretation and almost the entire duty demands have been dropped at the first stage itself and even the balance confirmed demand is being set aside now, we set aside the penalties.

16. To summarize:

a) Interest is required to be paid on Rs.29,61,191/- and the interest of Rs.1,47,209/- paid by them meets this requirement.
b) Interest is required to be paid on Rs.15,59,640/-. The Appellant to calculate and pay the same within 8 weeks from the date of receipt of this communication.
c) The confirmed demand of Rs.74,64,464/- is set aside.
d) Penalties are set aside.

17. The Appeal is disposed of thus.

(Dictated and pronounced in the Open Court)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(A.K. JYOTISHI)
MEMBER (TECHNICAL)

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