IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA

REGIONAL BENCH - COURT NO.2

Excise Appeal No.367 of 2011
(Arising out of Order-in-Original No.3/Commissioner/CE/Kol-IV/2011 dated 28.02.2011 passed by Commissioner of Central Excise, Kolkata-IV.)

M/s. Titagarh Wagons Limited (Unit-II)
(Heavy Engineering Division, Hindmotor, Dist.-Hooghly-712233, West Bengal.)
...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-IV
.....Respondent
(Custom House, M.S. Building, 7th Floor, 15/1, Strand Road, Kolkata-700001.)

APPEARANCE

Shri B.Thakkar, Chartered Accountant for the Appellant (s)
Shri J.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI RAJU, MEMBER(TECHNICAL)

FINAL ORDER NO. 75497/2021

DATE OF HEARING : 28 July 2021
DATE OF DECISION : 28 July 2021

P.K. CHOUDHARY :

The instant appeal has been filed by M/s. Titagarh Wagons Limited assailing the Order-in-Original No. 3/COMMISSIONERATE/CE/KOL-IV/2011 dated 28.02.2011, whereby the learned Commissioner of Central Excise, Kolkata, has confirmed the central excise duty demand under Rule 6(3)(b) read with Rule 14 of the Cenvat Credit Rules, 2004 Rules for the period of September 2006 to September 2008.

2. Briefly stated in the facts of the case, the assessee is engaged in the business of manufacture of railway wagons, parts thereof and allied products. Apart from the sale of dutiable excisable goods, the appellant is also removing exempted goods. During the period in dispute, the appellant has cleared goods to Indian Railways by

claiming central excise duty exemption under Notification No 6/2002 dated 01.03.2006. The appellant has also claimed exemption under Notification no. 10/97-CE dated 01.03.20 07 for clearance of goods to Ministry of Defence. The instant demand has been raised under Rule 6(3)(b) of the Credit Rules by calculating 10% of the value of exempted goods on the ground that the appellant has not maintained separate records for manufacture of dutiable and exempted goods.

3. Shri B. Thakkar, Learned Chartered Accountant appeared for the appellant and Shri J, Chattopadhyay, learned Authorized Representative appeared for the Revenue.

4. Heard both sides through video conferencing and perused the appeal records.

5. We find that the issue to be decided in this appeal is whether the demand raised in the impugned order by invoking Rule 6(3)(b) of the Credit is legally sustainable whereby the amount of 10% of the value of exempted goods has been considered as ineligible credit.

6. We find that the appellant has submitted in the course of adjudication that credit is only obtained for clearance of eligible goods and that necessary records are maintained segregating the clearance of dutiable and exempted goods so that credit is availed only for dutiable goods. In the course of enquiry, which has been also recorded in the impugned order, Shri N.K. Mittal of the appellant company in response to Q.No.7 has categorically stated that as a regular practice they do not take Cenvat Credit on inputs used in exempted products. Further, in answer to Q. No. 9, he submitted that documents for dutiable and exempted inputs were kept in the separate file and corresponding records were kept in the computer system. The appellant had already reversed the Cenvat credit to the tune of Rs.23,87,696/- and 36,17,880/- in the course of adjudication for credit pertaining to clearance of exempted goods, which fact has been duly noted in the adjudication order and further the said amount has been

appropriated towards the duty demand. Further, in Para 5.8.2 of the impugned order, it has been noted that the appellant had reversed the credit voluntarily along with interest of Rs 6,81,409/-.The Ld. Commissioner has not disputed the calculation of the amount reversed by the assessee at the adjudication stage and has merely chosen to confirm demand of the disproportionate credit amount by applying 10% of the value of exempted goods.

7. The Appellant relies upon the judgement of the Hon'ble Supreme Court Judgment in the case of Chandrapura Magnet Wires (P) Ltd vs CCE 1996(81) ELT 3(SC), wherein it has been held that when proportionate credit has been reversed, the same would be considered as credit not availed. The appellant also submitted that if the amount of credit is reversed along with interest, then there is no violation of Rule 6 of Credit Rules. He relied on the following decisions:-

- Dr. Writers Food Products vs. C.C.E., Pune – 2009 (247) E.L.T. 391
- C.C.E. vs. Amola Holdings Pvt. Ltd. – 2009 (16) S.T.R. 46 (TRI-Allahabad)
- C.C.E. vs Mann Pharmaceuticals – 2011 (263) E.L.T. 661 (Gujarat High Court)

8. The appellant also contested the demand on limitation and also contested the imposition of penalty on same counts.

9. We find that the Tribunal in the case of Dr. Writers Food Products (Supra) has observed that :-

"8. The learned Jt. CDR, in view of the above, emphasized, that only when the credit is reversed before utilization and before clearance of the exempted goods, only then it will amount to not taking the credit. Hence, he prayed that the matter may be remanded to the Commissioner to verify this aspect. We, however, note that there is no specific finding by the Hon'ble Supreme Court that if the credit is reversed after utilization

and after the clearance of the exempted goods, it would still amount to taking the credit and exemption will not be available. The appellants, in the case before us, have not only reversed the credit of Rs. 70,21,383/- but also paid the interest of Rs. 4,71,189/-. We feel that by doing so, the appellants, have undone the act of taking/utilizing the credit and in the light of the Allahabad and Gujarat High Court judgments supra, it amounts to not taking the credit and, therefore, they are not required to pay an amount equal to 10%."

Further in a similar matter, rejecting the Departmental appeal in the case of C.C.E. vs Mann Pharmaceuticals (Supra), the Hon'ble Gujarat High Court has observed that :-

"7. As can be seen from the impugned order of the Tribunal, the Tribunal has merely followed the decision of the Supreme Court in the case of M/s. Chandrapur Magnet Wires Ltd. (supra), as well as a decision of the jurisdictional High Court in the case of M/s. Maize Products (supra). In the case of Commissioner of Central Excise v. Maize Products, this Court has held as follows :-

> *5. The appellant has produced relevant extracts from the relevant Rule of Cenvat Credit Rules, 2002 which relates to obligation of manufacturer of dutiable and exempted products. Under sub-rule (2) of the said Rules, a manufacturer is required to maintain separate accounts regarding inputs used for manufacturing of dutiable products and inputs used for manufacturing of exempted products. However, sub-rule (3) stipulates that, in a case where the manufacturer opts not to maintain separate accounts, the manufacturer shall follow either condition (a) or condition (b), as the case may be. Under the Rule, Explanation-1 provides that the amount mentioned in any of the conditions shall be paid by the manufacturer by debiting the Cenvat credit or otherwise.*
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> *6. Thus, in effect, the directions issued by the Tribunal are merely in consonance with the requirement of the relevant rule, and it is not possible to state that the Tribunal has committed any error in issuing such directions. The respondent assessee having accepted*

before the Tribunal to reverse the Cenvat credit as recorded by the Tribunal in paragraph No. 4 of the impugned order as regards reversal of the amount involved and any more amount that may be reversible, the Tribunal has issued directions accordingly."

8. Examining the impugned order of the Tribunal in the light of the aforesaid decision of this Court, it is not possible to state that the Tribunal has committed any legal infirmity so as to warrant interference. In the circumstances, no question of law, much less, a substantial question of law can be stated to arise out of the impugned order of the Tribunal. The appeal is accordingly dismissed."

9. In view of the above, since the legal position stands settled in favour of the assessee, we do not find any reason to take a contrary view. In the facts of the present case, since we find that the credit amount attributable to clearance of exempted goods stands already reversed which fact is on record, there is no justification to saddle the assessee with disproportionate demand by mechanically applying the formula of 10% of the value of exempted goods, moresoever when credit has not been availed of such huge amount.

In view of the above reasons, it is not possible to sustain the impugned order and thus, the same is set aside. Since we have decided the appeal on merits, we are not entering into the plea of limitation.

The appeal is allowed with consequential relief as per law.

(Operative part of the order was pronounced in the open Court.)

SD/
(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

SD/
(RAJU)
MEMBER (TECHNICAL)

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