IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Excise Appeal No.241 of 2009

(Arising out of Order-in-Original No.50/Commr./CE/Kol.III/2008-09 dated 06.02.2009 passed by Commissioner of Central Excise, Kolkata III)

M/s Pulsar Rubber Manufacturing Co.Pvt. Ltd.
P.O.-Ganganagar, Dist.-24 Parganas (North), West Bengal

Appellant

VERSUS

Commissioner of Central Excise, Kolkata III
180, Shantipally, Rajdanga Main Road, Kolkata-700107

Respondent

Appearance:
Shri Rip Das, Chartered Accountant for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO.75633/2021

DATE OF E-HEARING : 24.08.2021
DATE OF DECISION : 24.08.2021

Per P.K.Choudhary :

The instant appeal has been filed by the appellant, M/s. Pulsar Rubber Manufacturing Co. Pvt Ltd, against the Order-in-Original dated 06.02.2009 passed by the Ld. Commissioner of Central Excise, Kolkata, whereby Cenvat Credit on capital goods has been denied for the period from 2003-04 to 2007-08, consequent to which demand of central excise duty of Rs.83,95,428/- has been confirmed along with equivalent penalty and applicable interest.

2. Briefly stated, the facts of the case are that the appellant is engaged in the business of manufacturing rubber and articles thereof on which central excise duty is being paid. The appellant is availing the benefit of CENVAT Credit under the provisions of CENVAT Credit Rules, 2004. A Show Cause Notice dated 08.10.2008 was issued wherein it was alleged that the appellant has availed the depreciation benefit under the Income Tax Act on the excise duty portion of which Cenvat Credit has been claimed, thereby violating the provisions of Rule 4(4)

of the aforesaid Credit Rules. In the course of adjudication, the appellant submitted that the depreciation was inadvertently claimed and accordingly prayed to the authorities for taking a lenient view in the matter. The said notice was adjudicated by the Ld.Commissioner vide his Order dated 06.02.2009, which is the subject matter of challenge in the present appeal.

3. Heard Sri Rip Das, Learned Chartered Accountant (CA) for the appellant and Sri S. Mukhopadhyay, Authorised Representative (AR), for the Revenue.

4. The Ld. CA appearing for the appellant submitted that they have already reversed back the depreciation wrongly claimed under the Income Tax Act. The rectification petition filed by them under Section 154 of the Income Tax Act was rejected against which they preferred a petition under Section 264 of the said Act which also got rejected. Thereafter, they preferred a Writ Petition no. 395 of 2015 before the Hon'ble Calcutta High Court wherein the Hon'ble Court vide Order dated 16.06.2017 passed necessary directions to the Income tax authorities to accept the claim of the assessee to reverse the depreciation claim which has been duly given effect by the authorities concerned.

The Ld. CA accordingly submitted that since applicable income tax has already been offered to the Income Tax authorities by reversing the depreciation originally claimed on the excise duty portion, no dual benefit has been claimed by the assessee. Hence, there is no violation of the Cenvat Credit Rules. He accordingly prayed that the demand be set aside and the appeal be allowed.

5. The Ld. AR appearing for the Revenue reiterated the findings made by the Ld. Commissioner and submitted that since the condition of Rule 4(4) of the Credit Rules were not complied with, the appellant should not be allowed the credit even though they have subsequently reversed back the depreciation benefits under the Income Tax Act. He further submitted that in any case, since the appellant has reversed the depreciation much later, they are liable to pay interest for irregular availment of credit.

6. Heard both sides through video conferencing and perused the appeal records and the written submissions filed by the appellant.

7. It is observed that the appellant has subsequently reversed the depreciation wrongly claimed by them. The appellant has also produced the Hon'ble High Court's order and the orders passed by the Income tax authorities to substantiate their claim that deprecation claim has been written back. Since the depreciation has been written back, the appellant has met the criteria for availing the benefit of Cenvat Credit. Merely for the reasons that the deprecation has been subsequently written back, it would not be proper to deny the benefit of Cenvat credit so as to defeat the very purpose and object of the scheme of the CENVAT Credit Rules, which is a beneficial piece of legislation. We therefore uphold the entitlement of Cenvat Credit and thus set aside the demand of Cenvat Credit and the penalty as imposed in the impugned order.

8. In so far as issue regarding the claim of the interest raised by the Ld. Departmental Representative, we find it proper to remand the matter to the adjudicating authority for the limited purpose to decide the said question in accordance with law. Since the matter pertains to the past period pertaining to Financial Year from 2003-04 to 2007-08, the adjudicating authority is directed to pass the order in remand proceedings within a period of 3 months from the date of receipt of this order. Needless to mention, the adjudicating authority shall afford reasonable opportunity of personal hearing observing the principles of natural justice. The assessee shall not seek unnecessary adjournments to avoid further delay in completion of the remand proceedings.

9. The appeal is thus allowed by way of remand to the learned Adjudicating Authority.

(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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