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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76960 of 2019

(Arising out of Order-in-Appeal No.37/HWH/CE/2019-20 dated 25.04.2019 passed by Commissioner of CGST & Central Excise (Appeals-II), Kolkata.)

M/s. Ronix Polymer Private Limited
(Village-Bhadua, P.O.Mollabar, P.S. Dankuni, Dist.-Hooghly, West Bengal, Pin-711224.)

...Appellant

VERSUS

Commissioner of CGST & CX, Howrah Commissionerate
.....Respondent
(15/1, Strand Road, Kolkata-700001, West Bengal.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)
Shri A.Roy, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75534/2022

DATE OF HEARING : 9 June 2022
DATE OF DECISION : 27 September 2022

P.K.CHOUDHARY :

The instant Appeal has been filed by the assessee, M/s. Ronix Polymer Private Limited, against Order-in-Appeal dated 25.04.2019 whereby the Ld. Commissioner (Appeals), Kolkata has upheld the disallowance of Modvat credit of Rs.17,56,079.43 and has also upheld the imposition of penalty of Rs.15,00,000/-.

2. The present case pertaining to the period 1994-95 is in its third round of litigation before this Tribunal. The brief facts of the case are that the Appellant obtained registration with Central Excise Department on 17.06.1994 and filed a declaration on 20.12.1994 under Rule 57G of the Central Excise Rules, 1944 indicating their intention to avail transitional Modvat credit benefit. However, they

submitted central excise quarterly return for Financial Year 1994-95 belatedly on 28.08.1995 which was alleged to be in contravention of Rule 173G of the Central Excise Rules, 1944. The required classification list as per rules was also submitted belatedly on 28.03.1995. Vide their Letter dated 19.09.1995, they sought permission to avail transitional Modvat credit in terms of the aforesaid Rule 57H of the Central Excise Rules, 1944 duly accompanied with the duty paying documents and the copies of RG-23A registers.

3. A Show Cause Notice (SCN) dated 02.04.1996 was issued by invoking the extended period of limitation to deny Modvat credit for contravention of provisions of Rules 57H(1)(b), 57G, 173G and 173B of the Central Excise Rules, 1944. The said SCN was adjudicated by the Ld. Additional Commissioner, Central Excise, Kolkata vide Order-in-Original dated 11.05.1999 and the demand was confirmed as proposed in the SCN, including the issuance of notice beyond the prescribed period of six months, by invoking the extended period of limitation.

4. The Appeal filed by the assessee against the aforesaid adjudication Order came to be dismissed vide Order-in-Appeal dated 22.12.2000, since not maintainable for non-compliance with the requirement of pre-deposit in terms of the provisions of Section 35F of the Central Excise Act, 1944. Thereafter, the assessee preferred Appeal before the Tribunal which was decided against the assessee vide Order dated 16.07.2012, as it was held to be not maintainable on grounds of delay in filing the Appeal.

5. Aggrieved with the aforesaid Order of the Tribunal, the assessee preferred statutory Appeal under Section 35G before the Hon'ble Calcutta High Court whereby the Hon'ble High Court vide Order dated 13.02.2013 extended the time limit for making the pre-deposit. Vide the said Order, the Hon'ble High Court directed to deposit the entire dues within the stipulated timeline. It was also directed that subsequent to the said deposit, the matter will be decided by

Commissioner (Appeals) afresh. The assessee accordingly deposited the amount in compliance with the order of the Hon'ble High Court.

6. Pursuant to the direction of the Hon'ble High Court, the Ld. Commissioner (Appeals), Central Excise, Kolkata decided the Appeal afresh. Vide Order-in-Appeal dated 29.07.2015, the appeal came to be rejected by upholding the disallowance of Modvat credit. Thereafter, in the Appeal preferred by assessee before the Tribunal, the Tribunal vide Order dated 28.02.2017 observed that there was a lack of clarity with regard to the various facts more particularly with regard to the date of obtaining registration, filing of required declaration under Rule 57G & 57H and for all the said reasons, the matter was remanded to the original adjudicating authority for fresh adjudication.

7. In the terms of remand directions given by this Tribunal as aforesaid, the Ld. Joint Commissioner vide Order-in-Original dated 20.08.2018 confirmed the duty demand. The Ld. Joint Commissioner after noting the compliances made by the assessee on various dates for submission of declarations with regard to the availment of transitional Modvat credit, observed that the assessee was not entitled to any credit on the ground that the benefit of SSI exemption Notification No. 1/93-CE dated 28.02.1993 was claimed by the assessee. The Ld. Joint Commissioner also justified the issuance of impugned SCN beyond the prescribed normal period of limitation of 6 months.

8. Appeal filed by the assessee against the said adjudication order dated 20.08.2018 was also rejected by the Ld. Commissioner (Appeals), Central Excise, Kolkata vide Order-in-Appeal dated 25.04.2019 against which the assessee is in appeal before the Tribunal.

9. Heard Shri S.P.Siddhanta, Ld.Consultant for the appellant and Shri A.Roy, Ld.Authorized Representative for the Revenue and perused the appeal records.

10. In this case, the issue to be decided is whether the Appellant is eligible to avail the transitional Modvat Credit and whether the proceedings initiated vide the impugned SCN is legal.

11. On perusal of the impugned adjudication Order dated 20.08.2018, I find that the Ld. Joint Commissioner has observed that the assessee has suppressed the fact of availing the benefit of SSI exemption under Notification No. 1/93-CE (supra) by not paying the duty on finished goods during the period in dispute i.e. 1994-95, which allegation was not made in the SCN dated 02.04.1996 and, therefore, the proceedings have travelled clearly beyond the scope of allegations made in the SCN which cannot be legally sustained. The main reason that has been assigned to disallow the credit in the impugned order is that the Appellant has availed the aforesaid SSI exemption which was never alleged in the SCN. The Department was aware of the fact with regard to the availment of above exemption since that has been duly disclosed in the quarterly excise returns, though belatedly filed, and hence the same was within the knowledge of the Department at the time of issuance of the SCN. It is a settled legal position that when the assessee was not put to notice with regard to the reasons basis which the demand is being sought to be made, the proceedings cannot be legally sustained. Hence, the demand is liable to be quashed on this ground alone.

12. In so far as limitation is concerned, I find that the very basis of invocation of extended period of limitation is the alleged wrong availment of exemption notification, which in my view also cannot be sustained when no such allegation was ever made in the SCN as discussed above. I find that the only allegation in the SCN was with regard to availment of transitional credit of Modvat in terms of Rules 57G and 57H. Both the Authorities below have duly noted that the required declaration under Rule 57G was duly filed by the assessee on 20.12.1994 wherein the assessee communicated its intention to avail

the said credit which facts are not in dispute. Moreover, declaration under Rule 57H has also admittedly been submitted on 19.09.1995 which is on record. I find that even after having noted the aforesaid compliances, the authorities below have erred in invoking the extended period of limitation. Since the appeal is decided on the legal grounds stated above, I am not inclined to examine the correctness or eligibility of Modvat transitional credit on merits.

For both the reasons stated above, the duty demand cannot be legally sustained, the same is set aside. The appeal is thus allowed with consequential relief as per law.

(Order pronounced in the open court on 27 September 2022.)

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

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