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

REGIONAL BENCH - COURT NO.3

Excise Appeal No.76563 of 2018

(Arising out of Order-in-Appeal No.115/Kol-V/2017 dated 22.12.2017 passed by Commissioner of CGST & CX, (Appeal-I), Kolkata.)

M/s. Versatile Wires Limited
(Bakrahat Road, Vill. + P.O. – Rasapunja, 24 Parganas (South), Pin-700104.)

...Appellant

VERSUS

Commissioner of CGST & CX, Kolkata North Commissionerate

.....Respondent

(180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75491/2023

DATE OF HEARING : 30 May 2023
DATE OF DECISION : 30 May 2023

P.K.CHOUDHARY :

The present Appeal has been filed by the Appellant assailing the order of the Ld.Commissioner(Appeals) dated 22.12.2017.

2. The facts of the case in brief are that there was a burglary in their factory on 30.06.2010 and 16.08.2010 and they had filed FIR to the nearby Bishnupur Police Station. It is submitted that the same were reflected in their balance sheet and CERA had made the audit observation on the basis of the entry in the balance sheet and hence there was no suppression of facts by them as alleged in the Show Cause Notice. It is the case of the Appellant that the incidence of burglary took place in 2010 and the Show Cause Notice was issued on 20.12.2013 and hence there was no suppression of facts and accordingly Show Cause Notice was barred by limitation of time. It is

further claimed that the goods worth more than Rs.5.00 Lakhs had been stolen and they had received insurance claim of only Rs.3.20 Lakhs. It was also contended that the burglary was not due to their fault and hence the question of penalty does not arise. It is the case of the Department that the assessee had taken CENVAT Credit on Copper wire rods during the year 2009-10, which was not used in or in relation to the manufacture of the final products. As per Rule 3(1) of the CENVAT Credit Rules, 2004, a manufacturer is eligible to take CENVAT Credit of duty paid on inputs used in or in relation to the manufacture of the final products. The assessee admitted the fact that the portion of the inputs on which CENVAT Credit had been taken had been lost due to burglary in the factory during the year 2010-11. However, the assessee had paid the irregular CENVAT Credit to the tune to Rs.61,190/- on 05.02.2013 by Challan No.77093 dated 05.02.2013. This fact has been recorded in the Show Cause Notice and the payment has also been appropriated in the Order-in-Original.

3. Heard both sides and perused the appeal records.

4. The Ld.Advocate appearing on behalf of the Appellant submits that he is not pressing on other grounds of appeal and is only praying for setting aside the penalty imposed under Rule 15(2) of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. The Ld.Advocate vehemently argued that there was no question of imposition of penalty under the provisions of Section 11AC of the Central Excise Act, 1944. The ingredients of Section 11AC i.e. fraud, collusion, willful misstatement or contravention of the provisions of the Acts and the Rules made thereunder are not present. Hence the question of imposition of penalty on them under Section 11AC is not warranted.

5. I find that there was a burglary in the factory premises of the Appellants during the year 2010-11. During the CERA Audit it was observed that some inputs of Copper wire rods on which CENVAT Credit was taken had not been used for manufacture of final products. Accordingly, the assessee was asked to reverse the CENVAT Credit

taken on the said inputs. On being pointed out the assessee paid the irregularly availed CENVAT Credit to the tune of Rs.61,190/- on 05.02.2013. This fact has also been recorded in the Show Cause Notice and the amount has been appropriated in the Order-in-Original. On facts, as stated above and under the circumstances of the case I do not find any ingredients of fraud, collusion, suppression of facts, willful misstatement or contravention of the provisions of the Act or the Rules so as to render the assessee liable to penalty under Section 11AC of the Act. Accordingly, it is my considered view that the penalty imposed under Section 11AC is not sustainable and is accordingly set aside. The Appeal filed by the Appellant is allowed to the above extent.

(Dictated and pronounced in the open Court.)

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

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