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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.475 of 2012

(Arising out of Order-in-Original No.24/Commissioner/CE/Haldia/Adjn/2012 dated 29.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

M/s. Haldia Petrochemicals Limited
(1, Auckland Place, Kolkata-700017.)

...Appellant

VERSUS

Commissioner of Central Excise, Haldia

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

<u>APPEARANCE</u>

Shri Arvind Baheti, Chartered Accountant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 75872/2023</u>

DATE OF HEARING : 22 June 2023
DATE OF DECISION : 28 June 2023

Per : P.K. CHOUDHARY :

Excise Appeal No. 475/2012 is directed against 'Order-in-Original' ('O-I-O') No. 24dated 29 March 2012 passed by the Ld. Commissioner of Central Excise, Haldia Commissionerate.

2. Briefly stated the facts of the case are that the Appellant is a manufacturer of dutiable final product at its factory at Haldia operating under the Centvat Credit Scheme. The Appellant had cleared from its factory the inputs/semi processed goods i.e. Polymer Granules (PP and LLDPE) to various job workers under Rule 4(5)(a) of the Cenvat Credit Rules ('CCR') for manufacture of woven sacks and bags. Pursuant to

an audit of records/job work register maintained by the Appellant, it was found that there was shortage in the receipt of the inputs/processed goods sent to the job workers. It is the case of the revenue that pro-rata credit should have been reversed by the Appellant on the quantity of inputs sent to the job worker but not received back within the period prescribed under Rule 4(5)(a) of the CCR. Accordingly, proceedings were initiated against the Appellant vide Show-cause Notice dated 10 December 2004 (SCN-1) issued for the period December 2002 to December 2003 alleging short receipt of 243 MTand demanding reversal of Rs. 18,16,908.11. Another Show-cause Notice dated 7 May 2008 (SCN-2) was also issued alleging short receipt of 1314 MT {1206.1 MT of PP and 108.07 MT of LLDPE) out of 7259.10 MT and 1464.25 MT of PP and LLDPE Granules respectively sent to the job workers during the period April 2003 to August 2004 and demanding reversal of Rs. 97,55,658/-.

3. Both the SCN-1 and SCN-2 were adjudicated by a common order and the demand was confirmed for Rs. 67,67,850/- along with equivalent penalty. Further, the short receipt for the period April 2003 to August 2004 was determined as 667.65 MT (552.1 MT of PP and 115.49 MT of LLDPE) as opposed to 1314.17 MT proposed in SCN-2 and consequently, the demand of Rs. 48,04,716/- was dropped from SCN-2.

4. The Ld. Authorized Representative appearing for the Appellant submits that the short receipt was on account of wastage/scrap which was inevitable in the course of processing of PP and LLDPE Granules into woven sacks and bags. Such wastage/shortage was 8.36% for PP Granules and 5.02% for LLDPE Granules, with an average wastage/scrap of 7.50%. The wastage/scrap at the job worker’s end was well within the standard input output norms prescribed for PP woven sacks/fabrics (refer Item No. H240 and H241) and articles of LLDPE (refer Item No. H356) notified for the plastic products. The

Work Orders entered into with the job workers also provided for wastage/shortage of 10% for PP and 5% for LLDPE respectively. Reliance was placed upon the following decisions to contend that there was no requirement for reversal of credit in respect of such wastage/scrap generated at the job workers premises and not returned back to the manufacturer/supplier:

(i) *Emco Limited Vs. Commissioner of Central Excise, Mumbai-III [2008 (223) ELT 613 (Tri. Mumbai]*

(ii) *Forgings (India) Iron and Steel Limited Vs. Commissioner of CGST & Excise, Howrah [2022 (11) TMI 793 – CESTAT, Kolkata]*

It was also contended that the job workers had in any event discharged excise duty on the clearance of waste/scrap from its factory premises which was evident from an Order dated 9 June 2006 passed by the Jurisdictional Assistant Commissioner on a connected issue for an overlapping period. The demand confirmed was also contested on the ground of limitation in light of the Order dated 9 June 2006 passed by the Assistant Commissioner and the yearly permission granted by the Jurisdictional Commissioner under Rule 4(6) of the CCR acknowledging the generation of waste/scrap at the job workers end.

5. The Ld. Departmental Representative justifies the findings in the 'O-I-O'.

6. Heard both sides and perused the appeal records.

7. The issue arising for our determination in the instant proceedings is whether pro-rata Cenvat credit is required to be reversed under Rule 4(5)(a) of the CCR with respect to the short receipt of the processed inputs from the premises of the job workers. We find that the wastage/scrap generated in the course of job work, being less than 10% for PP Granules and 5% for LLDPE Granules was

within the prescribed SION norms and the existence of such wastage/scrap in the process of conversion is provided for not only in the Work Orders but also in the permission conferred by the Jurisdictional Commissioner under Rule 4(6) of the CCR. Further, the claim of the Appellant that the job worker had discharged duty on the waste/scrap at the time of his clearance is also supported by job work Challans, excise Invoice besides the Order dated 9 June 2006 passed by the Assistant Commissioner in the connected proceedings. In any event, the issue involved herein is also covered by the decision of this Tribunal in Emco Limited case (supra) set out below:

> *"After hearing both sides for some time on the application forwaiver of pre-deposit of duty of Rs. 23,33,697/-, confirmed on the waste and scrap generated at the job workers' end,against the supplier of inputs/appellant herein, on the ground that the job worker had not discharged duty liability thereon,we found that it was possible to decide the appeal itself at this stage as the issue in dispute is as to whether the principal manufacturer/suppler of inputs is liable to discharge duty in terms of Rule 57AC/Rule 4(5)(a) of the Cenvat Credit Rules, 2002, stands settled by the decision of the Hon'ble Bombay High Court in the case of Commissioner of Central Excise v.Rocket Engineering Corporation Ltd. - 2006 (76) RLT 8 (Bom). Hence after granting the prayer for stay, we take-up theappeal itself for final disposal.*
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> ***2.*** *Irrespective of whether the job worker had discharged the duty liability on the scrap generated at hisend, the duty liability cannot be fastened on the principal manufacturer/supplier of inputs in the light of the Hon'ble Bombay High Court decision cited supra, upholding Tribunal's order reported in 2005 (191) E.L.T. 483which in turn relies upon thedecision in the case of Preetam Enterprises, 2004 (173) E.L.T. 26(Tribunal). The period in dispute in the present appeal ispost 31-3-2000 which is the period covered by the Hon'ble Bombay High Court decision cited supra. Following the ratio ofthe Hon'ble Bombay High Court decision as cited hereinabove, we hold that the duty demand against the appellant*

herein,who is supplier of inputs cannot be sustained. We therefore set aside the impugned order and allow the appeal."

To the same effect, is the decision of this Tribunal in Forgings (India) case (supra). Further, the Board vide its Circular dated 3 April 2000 has also clarified at para 5 that Cenvat credit shall be admissible in respect of the inputs contained in any waste, refuse or byproduct. Therefore, the duty demand confirmed by the impugned O-I-O cannot sustain on merits.

The appeal is allowed as above and the impugned O-I-O is set aside, with consequential relief, if any.

(Order pronounced in the open court on 28 June 2023.)

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

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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