

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.98 of 2010

(Arising out of Order-in-Appeal No.37/D/CE(A)/GHY/09 dated 17.12.09 passed by Commissioner(Appeals) of Customs & Central Excise, Guwahati.)

**M/s. Bagjan Tea Estate
Of McLEOD Russel India Limited**
(4, Mangoe Lane, 8th Floor, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(F-Lane, Milan Nagar, Dibrugarh-786003, Assam.)

WITH

Excise Appeal No.100 of 2010

(Arising out of Order-in-Appeal No.38/D/CE(A)/GHY/09 dated 17.12.09 passed by Commissioner(Appeals) of Customs & Central Excise, Guwahati.)

M/s. Bhawani Tea Industries
(Shri D.R. Dutta Chaudhury, Advocate
15, P.K.Guha Lane, Modern Park, Kolkata-700028.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(F-Lane, Milan Nagar, Dibrugarh-786003, Assam.)

AND

Excise Appeal No.168 of 2010

(Arising out of Order-in-Appeal No.39/D/CE(A)/GHY/09 dated 17.12.09 passed by Commissioner(Appeals) of Customs & Central Excise, Guwahati.)

M/s. Guna Tea Industries
(Gunanagar, P.O.Chongkham-792104, Dist.Lohit, Arunachal Pradesh.)

...Appellant

VERSUS

Commissioner of Central Excise, Dibrugarh

.....Respondent

(F-Lane, Milan Nagar, Dibrugarh-786003, Assam.)

APPEARANCE

NONE for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 75877-75879/2023

DATE OF HEARING : 17 May 2023

DATE OF DECISION : 28 June 2023

Per : K. ANPAZHAKAN :

M/s. Bhawani Tea Industries, Dibrugarh(Appellant 1)are engaged in the manufacture of Tea falling under the Chapter heading 0902 of the Central Excise Tariff, 1985. They were clearing the product after observing the Central Excise procedure on payment of appropriate Central Excised duty in terms of Notification No.33/99-CE dated 08.07.1999.The factory was entitled to the benefit under the aforesaid notification as all the necessary conditions indicated in the above mentioned notification was complied. They were allowed refund of Rs.34,66,423/- for the period September 1999 to 31.12.2002 to the extent of the duty paid through their account current.

2. The jurisdictional Assistant Commissioner, vide Order dated 30.05.2003, demanded an amount of Rs.8,58,029/-, as erroneous refund, in terms of the retrospective amendment of the Notification No.33/99-CE dated 08.07.1999, brought by Section 153 of the Finance Act, 2003. The Appellant preferred appeal before the Ld.Commissioner(Appeals), Guwahati, who dismissed the appeal vide Order-in-Appeal under the Order-in-Appeal dated 13.11.2006. The Appellants went on further appeal before the Tribunal, who held that the Hon'ble High Court's order upholding the constitutional validity of retrospective amendment is to be followed and the credit availed lying unutilized was required to be demanded from the Appellant. The Tribunal remanded the matter to the original authority with the

direction to decide the matter afresh after affording reasonable opportunity of personal hearing to the appellants.

3. In the denovo Adjudication, the Ld. Assistant Commissioner passed Order dated 12.03.2008 confirming an amount of Rs.8,58,029/- along with interest @ 15% in terms of provision of the clause no.145(1) of the Finance Bill 2003 and Section 153 of the Finance Act, 2003. On appeal, the Ld.Commissioner(Appeals) rejected the appeal vide Order-in-Appeal dated 17.12.09. Aggrieved against this impugned order, the Appellant has filed the present appeal

4. M/s Bhagjan Tea Estate, Digboi(Appellant2) has taken a refund of Rs 32,26,595/- as per Exemption Notification 33/99 dated 08.07.99. Action was initiated against them to recover the erroneous refund. The demands confirmed against them were finally upheld by the Commissioner(Appeals) vide O-I-A dated 17.12.2009. Guna Tea Industries, Arunachal Pradesh (Appellant 3) have taken refund of Rd.23,48,518/- and recovery action initiated against erroneous refund, which was upheld by the Commissioner(Appeals) vide O-I-A dated 10.12.2009. Since, the issue involved in all the three impugned orders are the same, all the three appeals all taken up together for decision.

5. In their submissions, the Appellantstogether stated that

(i) The demands are not sustainable as they were made in excess of the power conferred under section 153 of the Finance Act 2003 (Corresponding to Clause 145 of Finance Bill, 2003).

(ii) The Tribunal Kolkata vide its Order dated 12/03/2018 in Appeal No Ex/355/2008 between Hunwal Tea Estate Vs Commissioner of Central Excise, Dibrugarh held that the Revenue has acted beyond the scope of Clause 145(1) of the Finance Bill,2003, by raising the demand of recovery of credit till 28/02/2003 instead of 22/12/2002. The Appeal filed by the Appellant in the present case bears the same question of law as well as facts and circumstances and hence the said decision is squarely applicable to their case.

(iii) The exemption notification ceased to have any effect on Tea Industry on withdrawal of Basis Excise duty on Tea w.e.f.28/02/2003.

(iv) There was a void between the date of giving retrospective effect and the date of applicability of the notification. The retrospective effect can only be effected between two live ends of a legal process and it can never bind two dead ends.

(v) The Hon'ble Gauhati High Court has observed that extending the operation of the Exemption Notification beyond 28/02/2003 is not possible for the companies whose basic excise duty was abolished. The liability of the retrospective effect shall be operational only for those who were still within the operational effect of the Exemption Notification as on 13/05/2003, but not for those who ceased to be within the same on 28/02/2003 or in stricter sense the retrospective effect on 22/12/2002 itself.

(vi) The demands are violative of Entry 84 of List 1 of Schedule VII read with Article 246 being having no nexus with manufacturing. Mere balance of CENVAT Credit represents a mere balance which cannot assume the character of duty.

(vii) The unutilized Cenvat credit lying in the books were neither tax nor duty nor impost of any nature which can be collected.

(viii) If the demands were paid it would result in excess payment of duty.

Accordingly, they contended that the demands are not sustainable.

6. The Ld Departmental Representative reiterated the findings of the Adjudicating Authority in the Impugned orders.

7. Heard both sides and perused the documents available on record.

8. We find that the demands in these cases have arisen due to retrospective amendment of Notification 33/99-CE dated 08/07/99 through section 153 of the Finance Act 2003 . The said retrospective amendment was upheld by the Hon'ble Guwahati High Court vide its Order dated 21/09/2006. The above said amendment envisaged that CENVAT Credit availed shall be payable retrospectively within a period of 30 days from the day the Finance Bill received the assent of the president and in the event of non payment of duty, 15% interest shall be payable from the date immediately after the expiry of the period of

30 days. Accordingly, the impugned orders confirmed the demands as mentioned in Paras 1 to 4 above, being the CENVAT credit lying unutilized as on 28/02/2003. It is the case of the Appellant that this demand has gone beyond what is envisaged in the retrospective amendment. The Appellants stated that the retrospective amendment only validates recovery of CENVAT Credit availed between 08/07/199 to 22/12/2002. The demands in these three cases have gone beyond 22/12/2002 and sought recovery of CENVAT Credit lying unutilized as on 28/02/2003. They cited the decision of the Tribunal Kolkata in the case of Hunwal Tea Estate Vs Commissioner of central excise, Dibrugarh where under the same facts and circumstances, the Tribunal Kolkata has set aside the demand and allowed their appeal. We find that the decision of the Tribunal in the case of Hunwal Tea Estate cited by the Appellants is squarely applicable in this case. The retrospective amendment has validated recovery of Cenvat credit availed for the period from 08/07/99 to 22/12/2002 only. Whereas, the demand in these cases have gone beyond 22/12/2002 and demanded recovery of CENVAT credit availed upto 28/02/2003. Accordingly, we hold that the the demands in the impugned orders are not sustainable and liable to be set aside.

9. In view of the above discussion, we set aside the impugned orders and allow the appeal filed by the Appellants.

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

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)