IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 962 of 2011

(Arising out of Order-in-Original No.16/COMMR/CE/KOL-III/2010-11 dated 19.08.2011 passed by Commissioner, Central Excise, Kolkata-III Commissionerate)

M/s Associated Pigments Ltd.
(260, B. T. Road, Sukchar, 24-Parganas (North), Kolkata-700115)

Appellant

VERSUS

Commr. of Central Excise, Kolkata-III
(180, Shantipally, Rajdanga Main Road, Kolkata-700107)

APPEARANCE :
Mr. Sourach Bagaria & Mr. Indranil Banerjee, both for the Appellant
Mr. P. K. Ghosh, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.76422/2023

Date of Hearing : 11 August 2023
Date of Decision : 11 August 2023

PER R. MURALIDHAR

The Appellants are manufacturer of Lead Oxides. They have factories at B. T. Road and Panskura. They import Lead Oxides which is used in the manufacturer of their finished goods. During 2005, their B. T. Road factory was under works suspension. For the orders placed by this factory to the overseas exporter when the consignment was imported, the clearance was made by this unit but was sent to their Pansukra unit after duly endorsing this fact behind the Bills of Entry. Accordingly, the materials were received and used by the Pansukra Unit who were taking the Cenvat Credit based on such endorsement behind the Bills of Entry. In 2008, the Appellant after informing the Jurisdictional AC, once again commenced their work operations at their B. T. Road factory unit. They imported five consignments of Lead Oxides which were cleared under five Bills of Entry. These consignments were duly received in the B. T. Road factory, accounted for in the RG 23 A Part 1 and Part II Registers and Cenvat was taken by them on the basis of the Bills of Entry. However, on account of clerical error in respect of four Bills of Entry, they continued to give the endorsement behind the Bill of Entry that the goods were being sent to their Pansukra Unit though all the four consignments were received and used at their B. T. Road unit only. The Department took the view that the imported consignments were cleared to their Pansukra Unit under the endorsed Bills of Entry and still the Cenvat Credit was taken at B. T. Road, and issued Show Cause Notice demanding reversal of Credit of Rs.53,60,875/- in respect of all the five Bills of Entry. In the due course, the demand came to be confirmed along with interest and penalty. Being aggrieved, the Appellant is before the Tribunal.

2. The Learned Advocate appearing on behalf of the Appellant submits that the imported goods were received at the B. T. Road factory only and no quantities were dispatched to the Pansukra Unit (except for small quantity in respect of the fifth Bill of Entry for which due endorsement was made in the Bill of Entry). Further he submits that all the entries towards receipt of stock were made in the RG 23 A Part 1 Record of the B. T. Factory Unit and these details were submitted to the Department. They have also got the fact verified by the Jurisdictional Authorities of Pansukra unit to the effect that no Cenvat Credit was taken by that unit against these erroneously endorsed Bills of Entry. He draws our attention to the first verification report given by the Range Superintendent, Haldia-II Division dated 20/05/2010 and also to the second verification report given by Range Superintendent of Haldia-II Division dated 10/06/2011. These two verifications clarify that no Cenvat Credit was taken at Pansukra Unit and the goods in question were not received there ruling out the possibility of taking Cevat Credit. Based on these facts, the Learned Advocate submits that the impugned OIA is required to be set aside on merits.

3. He also submits that for the Credits taken by them during the period June and July 2008, the Show Cause Notice was issued much

later on 10/02/2011 by invoking the proviso to Section 11A. Since all the Cenvat entries were properly reflected in the ER-1 Returns and Stocks and Cenvat details were properly recorded in the RG 23 A Part 1 and Part II Records, there is absolutely no question of any suppression of their part. The very fact that the Range Superintendent of Haldia Division has verified the details at Pansukra Unit and certified that no Cenvat was taken at that unit goes to clarify that this is not a case of any suppression with an intent to evade. Accordingly, he submits that the confirmed demand is required to be set aside on account of limitation also.

4. The Learned AR reiterates the findings of the lower Authorities and justifies the confirmed demands.

5. Heard both sides and perused the documents.

6. Admittedly the Range Officials of Pansukra Unit have certified on 20/05/2010 and on 10/06/2011 that no input materials under the Bills of Entry in question were received by that unit nor any Cenvat Credit was taken by them. This combined with the fact that the Appellant unit at B. T. Road has mainlined full records towards receipt and issue of the materials would clarify that the Appellants had received the imported goods at their B. T. Road unit and were correct in taking the Cenvat Credit based on the Bills of Entry. The endorsement behind the Bills of Entry can be ignored as a unintended clerical error. It is seen from the OIO that though the Adjudicating Authority has made a mention of the Certificates issued by the Range Superintendent, he has not given any findings as to why he has ignored the fact that this certificate also clearly states that no input materials have been received at the Pansukra Unit. He has also not considered the details of RG 23 A records produced by the Appellant. Had he taken the trouble of getting these facts verified and also taken a proper note of Certificates issued by the Range Superintendent, the litigation could have been closed at that point of time itself without having to make the Tribunal and Appellant to waste precious time to get the issue sorted out after so many years. We hold that the Appeal is allowed on merits.

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7. Further it is seen that the Show Cause Notice has been issued after more than 3 years of Cenvat being taken by the Appellant. When Cenvat taken has been reflected in the ER 1 Return and non-taking of Cenvat at Pansukra unit has been verified and certified by the Range Superintendent, the Department cannot allege any suppression on the part of the Appellant. Therefore, we hold that the impugned order is not sustainable even on account of limitation.

8. Accordingly, we allow the Appeal filed by the Appellant both on merits as well as on account of limitation. The Appellant would be eligible for consequential relief, if any, as per law.

(Operative part of the Order was pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja