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

REGIONAL BENCH – COURT NO.2

(1) Excise Appeal No.112 of 2011
Cross Objection Nos.68 of 2011
(On behalf of Revenue)

(Arising out of Order-in-Original No.CCE/BBSR-I/30-41/2010 dated 29.10.2010 passed by Commissioner of Customs,Central Excise & Service Tax, Bhubaneswar)

Commissioner of Customs, Central Excise & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Appellant

VERSUS

M/s J.K.Paper Limited
P.O.-Jaykaypur, Dist.-Rayagada, Orissa

Respondent

WITH

(2) Excise Appeal No.113 of 2011
Cross Objection No.69 of 2011
(3) Excise Appeal No.114 of 2011
Cross Objection No.70 of 2011
(4) Excise Appeal No.115 of 2011
Cross Objection No.71 of 2011
(5) Excise Appeal No.116 of 2011
Cross Objection No.72 of 2011
(6) Excise Appeal No.117 of 2011
Cross Objection No.73 of 2011
(7) Excise Appeal No.118 of 2011
Cross Objection No.74 of 2011
(8) Excise Appeal No.119 of 2011
Cross Objection No.75 of 2011
(9) Excise Appeal No.120 of 2011
Cross Objection No.76 of 2011
(10) Excise Appeal No.121 of 2011
Cross Objection No.77 of 2011
(11) Excise Appeal No.122 of 2011
Cross Objection No.78 of 2011

(Arising out of Order-in-Original No.CCE/BBSR-I/30-41/2010 dated 29.10.2010 passed by Commissioner of Customs,Central Excise & Service Tax, Bhubaneswar)

Commissioner of Customs, Central Excise & Service Tax, Bhubaneswar I
C.R.Building, Rajaswa Vihar, Bhubaneswar-751007

Appellant

VERSUS

M/s J.K.Paper Limited
P.O.-Jaykaypur, Dist.-Rayagada, Orissa **Respondent**

Excise Appeal No.112 to 122 of 2011

APPERANCE :
Shri P.K.Ghosh, Authorised Representative for the Appellant
Shri Prakash Kumar Jana,Advocate for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO…76509-76519/2023

DATE OF HEARING : 29.08.2023
DATE OF DECISION : 29.08.2023

Per Ashok Jindal :

These appeals have been filed by the Revenue against the impugned order and the respondents have also filed Cross Objection of the appeals filed by the Revenue.

2. The facts of the case are that the respondents are engaged in the manufacture of paper and paper board and pulp and availing cenvat credit on inputs and input services in paying duty on their final products.

2.1 During the course of investigation, it was found that the respondents have used common inputs, like liquid chlorine, caustic soda lye, caustic soda flakes, hydrogen peroxide, sodium sulphate and alum etc. in the manufacture of both dutiable and exempted goods. The respondents have maintained separate accounts and had reversed the proportionate cenvat credit of the inputs used for exempted goods as per the said calculation on the above inputs.

2.2 Further, it was alleged that the separate accounts maintained by the respondents were in a hypothetical manner by adopting back calculation method on the basis of norms fixed for the month, which was adjusted at the close of the month, taking into consideration and average consumption as a whole. Since the issues of inputs are shown by multiplying norms for the month along with the quantity of pulp on sale, the reflection of the issues has nothing to do with their actual use as consumption of inputs is not separate. Accordingly, it was alleged that such backward calculation does not amount to separate accounts, ab initio. Further, the respondents have also availed cenvat credit on fuels viz. furnace oil and lubricating oil in the manufacture of both dutiable as well as exempted goods.

2.3 In view of these facts, various show-cause notices were issued to the respondents for recovery of the amount under Rule 57I of Central Excise Rules, 1944 and Rule 14 of Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944, along with interest and to impose penalties.

2.4 The matters were contested by the respondents by relying on the decision of their own case dated 16.03.2005 holding that the respondent's case remains covered by the Tribunal in the case of CCE Vs. Padmini Polymers reported in 2003 (151) ELT 358.

2.5 After issuance of the show-cause notice, the development took place through Finance Bill, 2010, wherein the changes were proposed with a view to regularize the common inputs used in dutiable as well as exempted final products on payment of equivalent cenvat credit attributable to the inputs used in exempted goods along with interest of 24%. The above changes covered by the period from 01.09.1996 to 31.03.2008.

2.6 The later period was also covered by the Notification No.10/2008-CE (NT) dated 01.03.2008 and the amendment was brought by the

Finance Act, 2010, which stipulates that where a person opts to pay the amount in accordance with the provisions of the Central Excise Rules, 1944/Rule 6 of the Cenvat Credit Rules,2001/2002/2004 as amended by sub-section (1) of Section 68 to 72 of the Finance Act, 2010, he will pay the amount along with interest specified thereunder and make an application to the Commissioner of Central Excise along with documentary evidence and a Certificate from a Chartered Accountant or a Cost Accountant certifying the amount of input credit attributable to the inputs used in or in relation to the manufacture of final products, which are exempted from whole of the duty of excise leviable thereon or chargeable to nil rate of duty within a period of six months from the date of which, the Finance Bill, 2010 receives the assent of the President of India on 08.05.2010.

2.7 In view of the above, the respondents vide letter dated 31.08.2010, submitted a Certificate from the Chartered Accountant certifying the facts that in respect of the inputs and input services attributable to the manufacture of exempted goods, the cenvat credit has already been reversed by the respondents. The respondents have also paid the due interest on the said reversal of cenvat credit.

2.8 On examination of the same, the ld.Adjudicating Authority dropped the proceedings against the respondent.

2.9 Against the said order, the Revenue are in appeals and the Respondents are also filed Cross Objection.

3. Heard the ld.A.R. for the Revenue and perused the records.

4. We find that the sole ground for filing these appeals is that the Chartered Accountant's Certificate submitted by the respondents was

not supported by any documentary evidences and no verification of correctness of the facts in the Chartered Accountant's Certificate was done by the adjudicating authority before settling the issue.

5. We also find that in terms of the amendment brought in Sections 68 to 72 of the Finance Act, 2010, wherein it is clear that if the proportionate cenvat credit of inputs or input services attributable to exempted final product is reversed along with the payment of interest within a period of six months from the assent of the Hon'ble President to the Finance Bill, 2010 and the Certificate to that effect is produced by the respondents, it is established that no proceedings will be sustainable against the respondents and the adjudicating authority in his order has examined the issue and after examining the issue, which was supported by the Certificate issued by the Chartered Accountant certifying that the respondents have reversed the proportionate cenvat credit attributable of input or input services to the final products and the interest due has been paid. In the appeals filed by the Revenue, the reversal is not disputed at all.

6. In that circumstances, we do not find any infirmity with the impugned order and accordingly, the same is upheld.

7. In the result, the appeals filed by the Revenue are dismissed. The Cross Objections filed by the respondents are also disposed off.

(The operative part of the order was pronounced in the open court.)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

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