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

Excise Appeal No. 151 of 2012

(Arising out of the Order-in-Appeal No. 97/Kol-IV/11 dated 08.12.2011 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.)

M/s Ma Tara Wires,
Durgapur Expressway, Post Office- Molla Simla, District- Hooghly Pin No. 712223 (WB)..

...Appellant (s)

VERSUS

Commissioner of Central Excise, Chandannagar-II.
Bank of Baroda Building, Station Road, Chandannagar, District-Hooghly-712136.
.
...**Respondent(s)**

APPERANCE :
None, (Request for hearing on merit) for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No…76598/2023

DATE OF HEARING : 05.09.2023
DATE OF DECISION : 05.09.2023

PER K. ANPAZHAKAN :

Ma Tara Wires (The Appellant) are engaged in the manufacture of Copper coated welding wire. As the value of clearance of goods manufactured by them was below the threshold limit of Rs 1.5 Crores, the Appellant were availing the benefit of Notification 8/2003 dated 01.03.2003 and clearing the goods without payment of duty. Proceedings were initiated against the Appellant vide Show Cause-Cum-Demand Notice dated 15.03.2010 , alleging that they have cleared goods without payment of duty vide three Commercial Bills bearing No.MTW/08/12/06-07 dated 30.11.2006, MTW/09/01/06-07 dated 01.12.2006 and MTW 09/02/06-07 dated 03.12.2006. Accordingly, Central Excise duty of Rs.43,533/- was demanded from them alleging suppression of fact with an intent to evade payment of duty, as they have not shown these three clearances in the monthly ER-1 filed for the month of December, 2006. The Appellant contested the demand of duty proposed in the Notice on the ground that the said removals were effected before granting Registration Certificate on 04.12.2006 and all the three consignments of finished goods were manufactured out of inputs on which no Cenvat Credit was taken. The case was adjudicated by the Assistant Commissioner, Central Excise, vide Order-in-Original dated 05.05.2010, wherein he confirmed the demand of duty for the removal of goods vide two invoices dated 01.12.06 & 03.12.06 and dropped the demand pertaining to the invoice dated 30.11.2006. He also imposed equivalent penalty under Section 11AC of the Central Excise Act, 1944 and demanded interest under Section 11AB. On appeal, the Commissioner (Appeals) upheld the demands vide Order-in-Appeal dated.08.12.2011. Aggrieved against the impugned order, the Appellant has filed the present appeal.

2. In their grounds of appeal, the Appellant stated that the demand was confirmed by the adjudicating authority on the ground that the Registration Certificate was granted on 30.11.2006 and as the Appellant has started taking Cenvat credit with effect from 01.12.2006. Accordingly, it was concluded that duty was payable on clearances with effect from 01.12.2006, after granting of the Registration. The Appellant stated that the Registration Certificate was not granted on 30.11.2011 as alleged in the Notice. They received it only on 04.12.2006. As such the clearances effected before communicating the Registration Certificate were exempted as per notification 8/2003 dated 01.03.2003, since the progressive value of the goods cleared by them was much below thr threshold limit of Rs.1.5 Crores. They have utilized the Cenvat Credit availed by them for clearance of the goods manufactured by them only after 04.12.06. As the raw material received on 30.11.06 was sent to job worker under proper document and received back only on 04.12.2006,

no credit was utilized by them prior to 04.12.2006. They further contended that the Cenvat Credit available on stock of inputs as on the date of registration has been allowed by Govt. Hence, there was no infirmity in availing of the credit by them on 01.12.2006. Accordingly, they prayed for setting aside the impugned order.

3. The Ld.A.R. reitterated the findings in the impugned order.

4. Heard both sides and perused the appeal records.

5. We observe that the Appellant were availing the benefit of Notification 8/2003 dated 01.03.3003 and clearing the goods without payment of duty, as the value of clearance of goods manufactured by them in the Financial Year 2006-07was below the threshold limit of Rs 1.5 Crores. They took registration on 30.11.2006, but the Registration Certificate was received by them only on 04.12.2006. In the meantime, they started availing the credit. The present issue pertains the duty liability on 3 invoices dated 30.11.2006, 01.12.06 and 03.12.06. The Appellant cleared the goods under these three invoices without payment of duty as they were still availing the benefit of Notification 8/2003 dated 0103.2003. However, the department took the view that the Appellant was liable to pay duty w.e.f.01.12.2006, as they have started availing Cenvat credit after taking Redistration on 30.11.2006. Accordingly, the demand of duty in respect of the two invoices dated 01.12.06 & 03.12.06, issued after 01.12.2006 were confirmed and the duty involved on the invoice dated 30.11.2006 was dropped.

6. We observe that the Appellant was eligible for exemption of Notification 8/2003 dated 01.03.2203 as their value of clearances in the Financial year 2006-07 was much below the threshold limit of Rs 1.5 Crores. The Appellant claimed that they have taken Registration on 30.11.2006, but the Registration Certificate was received only on 04.12.2006. In the impugned order, central excise duty has been demanded on the two invoices dated 01.12.06 & 03.12.06, on the ground that they have started taking Cenvat credit w.e.f 01.12.2006. We observe that the Appellant has not utilized any

credit till 04.12.2006. We observe that there is no infirmity in availing the Cenvat credit even before the date of Registration. The eligible credit, if any entered in their books of account before the date of registration can be utilized only after taking the Registration. We also observe that credit on stock of inputs lying in the factory as on the date of registration was admissible as per Para 5 of the Instruction contained in Ministry's F. No. 345/2/2000-TRU dated 29.08.2000 . Thus, duty cannot be demanded on the goods cleared vide invoices dated 01.12.06 & 03.12.06 only on the ground that they have availed Cenvat credit before that clearances. In this case, the Appellant has not utilized any credit for clearances of the goods mentioned in the said invoices raised prior to the date of registration ie,on 04.12.2006. Even if the date of registration is considered as 30.11.2006, no duty can be demanded on the said invoices raised on 01.12.06 & 03.12.06. In their submissions, the Appellant categorically stated that they have utilized the Cenvat Credit availed by them for clearance of the goods manufactured by them only after 04.12.06. as the raw material received on 30.11.06 was sent to job worker under proper document and received back only on 04.12.2006. Accordingly, we hold that the demand confirmed in the impugned order is not sustainable. Since, demand of duty is not sustainable, the question of demanding interest and imposing penalty does not arise.

7. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

(Dictated and pronounced in the open Court)

Sd/-
(Ashok Jindal)
Member (Judicial)

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

Tushar