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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.232 of 2011

(Arising out of Order-in-Original No.03-04/Commissioner/CE/Haldia/Adjn/2011 dated 20.01.2011 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

M/s. Imeco Limited
(Vill.-Sadatpur, P.O. – Rakhajungle, Kharagpur, Dist.-Midnapur West, Pin-721301.)
...Appellant

VERSUS

Commissioner of Central Excise, Haldia
.....Respondent
(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

Shri N.K.Choudhary, Advocate for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 77117/2023

DATE OF HEARING : 18 September 2023
DATE OF DECISION : 18 September 2023

Per : ASHOK JINDAL :

The appellant is manufacturer of excisable gods and have been availing cenvat credit on duty paid on input and input services and paying duty at the time of clearance of the goods. The appellant defaulted in payment of duty in the month of September 2009 and continued to pay duty during the period September 2009 to December 2009 by utilizing their cenvat credit account. In terms of rule 8(3A) of the Central Excise Rules, 2002, as the appellant has defaulted in payment of duty, therefore, the appellant was not entitled to utilize the cenvat credit for payment of duty during the defaulted period and the same is to be paid by the appellant through PLA only. In terms of this, a show cause notice dated 01.10.2010 was issued to the appellant to deny cenvat credit and the same is to be recovered through PLA. The matter was adjudicated, the demand was confirmed. Against the said order, the appellant is before us.

2. Ld.Advocate for the appellant submitted that the said issue has been settled by this Tribunal in the case of Baba Viswakarma Engg. Co. (P) Ltd. v. Commr. of C.Ex., Ghaziabad [2012 (278) E.L.T. 68 (Tri.-Del.)], wherein it has been held that the assessee can utilize the cenvat credit lying unutilized for payment of duty during the defaulted period, therefore, the proceedings against the appellant are not sustainable. He also relied upon the subsequent decisions of this Tribunal as also the Hon'ble High Court in the following cases:-

(a) Space Telelink Ltd. v. CCE, Delhi-I
[2016 (335) E.L.T. 157 (Tri.-Del.)]
(b) Neesa Infrastructure Ltd. v. CCE, Ahmedabad-II
[2015 (321) E.LT. 328 (Tri.-Ahmd.)]
(c) Commr. of CGST & CX, Vapi-Daman v. Twenty First Century Wires Rods
[2019 (26) G.S.T.S. 478 (Bom.)]
(d) Principal Commr. of C.Ex., Delhi-I v.Space Telelink Ltd.
[2017 (335) E.L.T. 189 (Del.)]

3. We find that the said issue has been settled by this Tribunal in the case of Baba Viswakarma Engg. Co. (P) Ltd. (supra), wherein this Tribunal has observed as under:-

> ***"13.*** *It is also relevant to note that even the consequence under the Act are that duty will have to be paid, interest will have to be paid, penalty will have to be paid and goods are liable to confiscation. In fact there is nothing in the Act which will bar payment of such short paid duty from Cenvat credit. Once the Act and Rule 8(3A) are read together a harmonious interpretation will be that during the period of default, payment through Cenvat credit will not be allowed. That is to say when the non-payment of duty for Oct. is dealt with after 18-12-2006 (when the default was made good) payment through Cenvat, even if paid earlier will be in due discharge. With the result the only consequence that will arise will be payment of interest and penalty.*

Interest will be payable so long as there is no proper discharge of duty. This is a consequence from Act but that will follow even if it is not mentioned in the Rules. But interest will be payable from the date of each clearance to the date on which the default is made good. This is so because once the defaulted amount is paid, thereafter the payment made through Cenvat become proper even if it is paid before the date on which defaulted amount is paid."

4. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(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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