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

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 75690-75691 of 2015

(Arising out of Order-in-original Nos. 13-14/Commissioner/CE/Kol-IV/2015 dated 18.05.2015 passed by Commissioner of Central Excise, Kolkata-IV.)

M/s Simplex Extruder Pvt. Ltd.,
(Delhi Road, P.O.- Kamdevpur, Chinsurah, Dist-Hooghly, West Bengal-712102.)
M/s Kirti Narayan Chanda,
Director of M/s Simplex Extruder Pvt. Ltd.,

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-IV,
(15/1, Strand Road, Kolkata-700001.)

.. ...**Respondent**

APPERANCE :
Ms. Micky Chowdhary, Shri B. N. Pal & Shri B. N. Ghosh, Advocates for the Appellant
Shri Debapriyo Sue, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

Final Order No...76469-76470/2024

DATE OF HEARING : 11.07.2024
DATE OF DECISION : 11.07.2024

Per R. Muralidhar :

The appellants are manufacturers of PVC pipe, pipe fittings, solvent, cements, etc., following under Chapter 39 of the Customs Tariff Act, 1985. The appellants are procuring their raw material PVC from Reliance Industries. On the ground that the goods were not being procured directly from Reliance Industries but were being procured from East India Sales Private Limited, who are not registered as dealers, a Show Cause Notice was issued to deny the CENVAT Credit of Rs.1,54,80,945/- taken by the appellant during the period 2010-11 and 2011-12.

2. The show cause notice was issued on 23.12.2014 by invoking the extended period provisions. The Revenue has taken the view that all the payments for the consignments received have been made by the appellant to the agent East India Sales and Service Private Limited and hence the purchase is required to be taken as purchase from that party only. Therefore, the entire CENVAT Credit taken by the appellant during the period under dispute was sought to be demanded. After due process, the adjudicating authority confirmed the demand along with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

3. The Learned Counsel appearing on behalf of the appellant points out to the invoices raised by Reliance Industries Limited on the appellant. He takes us through the Invoice No. 11347, wherein it is clearly shown that Reliance Industries Limited is treating the appellant as the buyer and the name of the appellant along with their CST, LST and Central Excise details are given in the Invoice. In the invoice, on the right side top corner, the agent's name is given as East India Sales and Service Private Limited.

4. The invoice also shows the details of consignment being booked under a particular Lorry Receipt number and date along with all the details of the Assessable Value, Excise Duty thereon etc. The learned counsel submits that this Invoice proves that the goods have been consigned directly by Reliance Industries to the appellant and the relevant Excise Duty, VAT etc. all have been directly charged on the appellant. Therefore, he submits that the appellants have correctly taken the CENVAT Credit on such invoices. The name of the agent has

been given in the invoice who actually has been appointed by the Reliance Industries for making the collections on their behalf. He submits that there is no statutory provision that the payment has to be made directly to the vendor and the same should not be made through any other agent appointed by him. Just because the payments have been routed through the agent, it cannot be assumed that the goods also have been sold by the agent only, whereas the factual details and the documentary details very clearly prove that the goods have been directly consigned by Reliance Industries to the appellant and the same have been received at the appellant's end and have been properly accounted for in the books of account.

5. This issue was raised by the audit team visiting the appellant's factory and on 15.09.2012 itself all the details were shown to the audit team. No further action was initiated for the next one and a half years. On 26.06.2014, summon were issued to the Director of the company and he appeared and gave his recorded statement on 7.08.2014. In this statement also, he has very clearly stated that the goods were directly being received from Reliance and only the payment was being routed through the agent, in view of the agreement between Reliance and the agent to that effect. The Learned Counsel submits that in spite of such clear documentary evidence placed, the adjudicating authority has still treated as if the goods have been procured from the agent and not from Reliance Industries.

6. He submits that there is no dispute about the fact that the goods in question have been received by the appellant in their factory and they have been properly used the same for manufacture of the finished

goods which have been cleared on payment of Excise Duty. In view of these factual details, the appellant submits that the appeal is required to be allowed on merits.

7. He further submits that the Show Cause Notice issued on 23.12.2014 for the period 2010-11 and 2011-12 is time-barred on the following grounds:-

> (a) The CENVAT Credits taken by them have been properly reflected in all their ER-1 Returns.
>
> (b) For the queries raised by the Audit Department, detailed reply was submitted by the appellant on 15.09.2012 itself. Therefore, on that day itself, the Department was very much aware that the appellants have taken credit on such invoices. This being so, there was no necessity for the Department to wait for more than two more years to issue the show-cause notice by invoking the extended period.
>
> (c) The appellant has directly received the goods from Reliance within their factory and utilized the goods for the manufacture of their finished products. Hence, they were under the bona fide belief that there was nothing wrong in taking the credit on such invoices even though the payment was being made through East India who is the agent of Reliance.

8. In view of these submissions, he prays that the impugned order may be set aside even on account of limitation.

9. The Learned AR reiterates the findings of the lower authorities. He submits that only after the detailed audit and verification taken up by the Department, the fact of the appellant taking the credit for the invoices for which the payments were made by them to the third party, had come to the knowledge of the Department. Therefore, he justifies the confirmed demands and prays that the appeal may be dismissed.

10. Heard both sides, perused the appeal papers and the documentary evidence placed before us. From the copies of the Invoices

submitted by the appellant, it is seen that the goods have been directly consigned by Reliance Industries Limited to the appellant wherein the appellant's Central Excise details and VAT details have been given. This invoice also shows the details of the Excise Duty paid, Education Cess paid, SHE paid and the relevant VAT applicable on such consignment. In one portion of the invoice, the details of the agent are given. There is nothing to suggest from this invoice that this consignment was dispatched by the agent to the appellant. Therefore, the entire premise on which the Show Cause Notice has been issued by the revenue is erroneous. There is no statutory requirement that the assessee should make the payments to the vendor directly and that the payment should not be through any agent appointed by the vendor. In this case, no proper evidence has been brought in by the revenue to the effect that the goods have been supplied by the agent of the vendor and hence the payment has been given to the agent of the vendor. The documentary evidence, on the contrary, proves that the goods have been directly consigned by the vendor and only the payment has been routed through the agent which is a normal commercial procedure.

11. Further, there is no dispute about the receipt and usage of the goods within the factory premises of the appellant. There is no allegation in the show-cause notice that the goods in question have not been received by the appellant or have not been used for the manufacture of the finished goods. In view of these factual details, we hold that the impugned order is not legally sustainable. Accordingly, we set aside the same and allow the appeal on merits.

12. Coming to the issue of limitation raised by the appellant, it is seen that the CENVAT taken by the appellant was questioned by the audit department in 2012 and the appellant has filed a detailed reply clarifying their stand and all the documentary evidence were already placed before the audit team. This being the case, there was no necessity for the department to prolong the issue of show cause notice. The summons issued in 2014 shows that only in order to justify the delay the Revenue has resorted to issue of summons. Since all the details of CENVAT being taken are disclosed by way of ER-1 Returns and the party has taken the credit based on the Invoices raised by Reliance directly on the appellant's name, they can be said to have bona fide belief that they are eligible for the CENVAT Credit. The Department also has not brought in any justification for delayed issue of the show-cause notice though all the facts were made available to the department by 2012 itself. In view of these facts, we hold that the show-cause notice issued on 23.12.2014 for the CENVAT Credits taken in the year 2010-11 and 2011-12 is hit by time bar. Therefore, we allow the appeal even on account of limitation.

13. Thus, the appeal stands allowed both on merits as well as on account of limitation. The appellant would be eligible for consequential relief, if any as per law.

(Dictated and pronounced in the open court)

Sd/-
(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.