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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 70801 of 2013

(Arising out of Order-in-Original No. 13/Commr/CE/GHY/12-13 dated 27.02.2013 passed by the Commissioner of Central Excise and Service Tax, Guwahati, Sethi Trust Building, G.S. Road, Bhangagarh, Guwahati – 781 005)

Commissioner of Central Excise and service Tax : Appellant
Sethi Trust Building, G.S. Road, Bhangagarh,
Guwahati – 781 005

VERSUS

M/s. Jumboo Roofing & Tiles : Respondent
Sila, Haluguri Chowk, Changsari,
Guwahati – 781 101

APPEARANCE:

Shri P.K. Ghosh, Authorized Representative for the Appellant-Revenue

Shri N.K. Chowdhury, Advocate for the Respondent

CORAM:

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

FINAL ORDER NO. 76734 / 2024

DATE OF HEARING / DECISION: 26.08.2024

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed by the Revenue against the Order-in-Original No. 13/Commr/CE/GHY/12-13 dated 27.02.2013 passed by the Commissioner of Central Excise and Service Tax, Guwahati Commissionerate.

2. The facts of the case are that the Respondent (M/s. Jumbo Roofings & Tiles, Guwahati), is a manufacturer based in the State of Assam and availed exemption in terms of Notification No. 20/2007-C.E. dated 25.04.2007, as amended. The department alleged that the Respondent has wrongly availed and utilized CENVAT Credit amounting to Rs.64,52,554/- representing Additional Duty of Customs and CVD on

imported goods in the month of September 2011, in contravention of Rule 3(4) of the CENVAT Credit Rules, 2004 (hereinafter referred to as 'CCR') and Para 2B of Notification No. 20/2007-C.E. dated 25.04.2007.

2.1. During the scrutiny of the E.R.-1 Returns filed by the Respondent, it was noticed that the Respondent had imported inputs as well as capital goods during the period from April 2009 to September, 2011. However, it was also noticed that the Respondent had taken the following credits totally amounting to Rs.64,52,554/- belatedly in the month of September, 2011: -

i. Credit of CVD & AED of Customs in respect of capital goods amounting to Rs.15,33,345/-;

ii. Credit in respect of inputs amounting to Rs.49,19,209/-.

2.2. The Revenue disputed the belated availment of CENVAT Credit amounting to Rs. 64,52,554/- and contended that the credit was available to the Respondent for the period from April 2009 to September, 2011; this credit should have been availed and utilized by the last day of the respective months as per the conditions stipulated in the said Notification. In view of the delayed availment of CENVAT Credit, the Revenue was of the view that the Respondent had paid more duty from PLA instead of utilizing the whole CENVAT Credit available to them in the respective months. Thus, the Revenue alleged that the respondent got more refund in cash during the said period. It was also alleged that the Respondent has not fulfilled the conditions mentioned in the C.B.E.C. Circular F. No. 101/04/2008-CX.3

dated 04.06.2009. Accordingly, a Show Cause Notice dated 15.10.2012 was issued to the Respondent proposing reversal of CENVAT Credit amounting to Rs.64,52,554/- along with interest and penalty.

2.3. Upon adjudication, the ld. adjudicating authority vide the impugned order dropped the demand raised in the Notice stating that the input credit availed by the Respondent pertained to four bills of entry, for which they took the credit of CVD on the date of receipt of the goods, but forgot to take the credit of additional duty of customs due to ignorance; when they realized the mistake, they availed the CENVAT Credit in the month of September, 2011 and thus it was held that there was no violation of the provisions of the CENVAT Credit Rules, 2004.

2.4. Aggrieved against the dropping of the demands, Revenue has filed this appeal.

3. In their grounds of appeal, the appellant-Revenue made the following submissions: -

i. The ld. adjudicating authority has erred in dropping the proceedings initiated against the Respondent in the impugned Notice when there is a clear case of non-compliance of the conditions for availing the benefit of Notification No. 20/2007-C.E. dated 25.04.2007, as amended, as stipulated in Clause 2B of the said Notification.

ii. Clause 2B of the said Notification stipulates that "In case where all the goods produced by a manufacturer are eligible for exemption under this notification, the exemption contained in this notification shall be subject to the condition that the manufacturer first utilizes whole of the

CENVAT credit available to them on the last day of the month under consideration for payment of duty on goods cleared during such month and pays the balance amount in cash."

iii. However, scrutiny of the ER-1 return filed by the Respondent for the month of September, 2011 revealed that the Respondent had received imported inputs as well as capital goods during the period from April, 2009 to September, 2011. But the Respondent took credit of CVD and additional duty of customs involved on the imported capital goods amounting to Rs. 15,33,345/- during the period from 01.09.2011 to 11.09.2011 in September, 2011 and they also took the credit of additional duty of customs involved on the imported inputs amounting to Rs. 49,19,209/- during the period from 01.09.2011 to 30.09.2011 also in September, 2011. This clearly is a case of non-fulfilment of the conditions stipulated for availing the said notification.

iv. The said Notification in clause 2B clearly prescribed a particular manner and sequence of discharge of duty liability in specific terms to be followed by the manufacturer unit to get duty exemption (refund) on finished goods. Conditions laid down therein were mandatory in nature. Further, Board's Circular under F.No. 101/04/2008-CX.3 dated 04.06.2009 describes that condition of first utilizing the whole amount of credit before payment in cash as a substantive condition for availing the benefit of the said notification. Thus, there was no question of revenue neutrality at all when the said notification prescribed pattern, manner and sequence of discharge of duty liability which was not fulfilled by the Respondent.

v. Further, the intention of the said notification to refund the amount that was discharged through the PLA (in cash) is for development of the area/region covered by the said notification. However, CENVAT credit taken on capital goods or inputs was not at all intended to be refunded by the said notification. In the present case it is observed that the Respondent by availing credit belatedly in contravention of the condition prescribed in the said notification paid more in PLA, which seems to enable them to get more refund than they were actually entitled to as per the said notification. Again, as per Board's Circular under F.No. 101/04/2008-CX.3 dated 04.06.2009 such excess amount of refund to the extent CENVAT credit was not taken, should either be deducted from the refund payable to the Respondent or recovered along with interest as the case may be and that the CENVAT credit wrongly/belatedly availed should be got reversed. These points were further reiterated by the Board through Board's Circular under F.No. 101/5/2012-CX.3 dated 11.06.2012.

3.1. Accordingly, the Revenue has prayed for setting aside the impugned order passed by the ld. adjudicating authority.

4. The Respondent submits that they took the credit of additional duty of customs in respect of four bills of entry in the month of September, 2011, which were received during the period April 2009 to September 2011. They submit that there is no doubt regarding the admissibility of the AED credit and

hence there is no violation of Rule 4(2)(a) of the CENVAT Credit Rules, 2004 in belatedly taking the credit in the month of September, 2011.

4.1. The Respondent also submits that they started paying duty in cash in November 2010 by utilizing the CENVAT Credit available in their books of accounts and paid the balance amount in cash for the period from November, 2010 to August, 2011 and claimed refund for those months under Notification No. 20/2007-C.E. dated 25.04.2007, as amended. Accordingly, there is no violation of condition 2B of the said notification.

4.2. It is the submission of the Respondent that the Show Cause Notice sought to deny the credit by relying on the C.B.E.C. Circular F. No. 101/04/2008-CX.3 dated 04.06.2009 stating that in cases where Cenvat Credit is not taken or utilized on a few invoices, the amount of such non-availed credit is to be deducted from the refund amount and the CENVAT Credit must be reversed by the manufacturer. In this regard, the Respondent points out that the ld. adjudicating authority has given a categorical finding on this aspect at paragraph 2.4 of the impugned order. As per the findings in the impugned order, there is no contravention of CCR or the Circular No. 101/04/2008-CX.3 dated 04.06.2009.

4.3. Accordingly, the Respondent prayed for rejecting the appeal filed by the Revenue.

5. Heard both sides and perused the appeal documents.

6. We observe that the Respondent has received capital goods in four bills of entry and they had taken the credit of CVD on the dates on which the goods were received. However, due to ignorance, they did not take the credit of the additional duty of customs, and when they came to know that such credit was admissible, they took credit of the entire amount in the month of September 2011.

6.1. We observe that in this case there is no dispute regarding the eligibility of the credit availed by the Respondent. We find that Rule 4(2)(a) of the CENVAT Credit Rules, 2004 prescribes the availability of CENVAT Credit on capital goods and it stipulates that CENVAT Credit in respect of capital goods shall be taken only for an amount not exceeding 50% of duty; as per Rule 4(2)(b) of these Rules, the balance amount of credit may be taken in any subsequent financial year. In terms of Rule 4(2)(a) of these Rules, in respect of capital goods received at any point of time in a given financial year, the CENVAT credit shall be taken only for an amount not exceeding 50% of duty paid on such capital goods in the same financial year. We are of the view that this sub-rule restricts the availability of CENVAT credit on capital goods to a maximum of 50% of duty paid on the said capital goods and this sub-rule does not make it mandatory that a manufacturer must avail the credit of 50% duty on the capital goods immediately on receipt of the capital goods. We do not find any other provision under the CENVAT Credit Rules, 2004 which debars a manufacturer from taking the credit if by some reason they fail to avail the credit immediately on receipt of the capital goods. Therefore, we are inclined to accept the Respondent's submission that they did not contravene any of the provisions of the CENVAT Credit

Rules, 2004 by failing to take credit immediately on receipt of the goods and by taking the credit at later dates.

6.2. We observe that the allegation of the Revenue is that the Respondent by availing credit belatedly in contravention of the condition prescribed in the said notification paid more duty through PLA, which enabled them to get more refund than they were actually entitled to as per the said notification. We observe that the Respondent started paying duty in cash in November 2010 by utilizing the CENVAT Credit available in their books of accounts and paid the balance amount in cash for the period from November, 2010 to August, 2011 and claimed refund for those months under Notification No. 20/2007-C.E. dated 25.04.2007. Since the Respondent has availed the credit belatedly, they have utilised this credit for payment of duty after September 2011. Thus, they got less refund for the period after September 2011. Thus, we find that there is no violation of condition 2B of the Notification No. 20/2007-C.E. dated 25.04.2007. Accordingly, we hold that there is no merit in the allegation of the Revenue that the Respondent has received excess refund during the period prior to September 2011.

6.3. From the impugned order, we observe that the alleged inadmissible credit taken in September 2011 has been proposed to be recovered under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944. As discussed in foregoing paras the alleged credits taken by the Respondent belatedly were not in contravention of any of the provisions of CENVAT Credit Rules, 2004. the Credit availed can be considered as irregular only if it is taken in contravention of any of the provisions of CENVAT Credit Rules, 2004. Since the credit taken is not found irregular, we are of the view that Rule 14 of CENVAT Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944 cannot be applied for recovery of the credit in this case.

6.4. In view of the above discussion, we do not find any merit in the submissions made by the Revenue that the Respondent has availed wrong/irregular credit. We also do not find any merit in the contention of the Revenue that the Respondent has received excess refund as they have availed the credit belatedly. Thus, we find that the ld. adjudicating authority has rightly passed the impugned order allowing the belated credit availed by the Respondent. Accordingly, we do not find any infirmity in the impugned order passed by the ld. adjudicating authority and hence we uphold the same. Since the credit availed is held to be eligible, the question of demanding interest and imposing penalty does not arise.

7. In the result, the appeal filed by the Revenue is dismissed.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd