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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75641 of 2019

(Arising out of Order-in-Appeal No.148/Kol-V/2018 dated 29.11.2018 passed by Commissioner, CGST & CX, (Appeal-I), Kolkata.)

M/s. Makesworth Industries Ltd.
(Banganagar Diamond Harbour Road, Dist-24 Parganas (South), West Bengal-743513.)

...Appellant

VERSUS

Commissioner, CGST & CX, Kolkata-South

.....Respondent

(GST Bhawan, 180, Shantipally, Rajdanga Main Road, Kolkata-700107.)

APPEARANCE

Shri Aditya Dutta, Advocate for the Appellant (s)
Shri B.K.Singh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 77697/2024

DATE OF HEARING : 26.11.2024
DATE OF DECISION : 03.12.2024

RAJEEV TANDON :

The appellant M/s. Makesworth Industries Ltd. have filed the impugned appeal assailing the Order-in-Appeal No.148/Kol-V/2018 dated 29.11.2018.

2. The facts of the case are that the appellant is a manufacturer of Cable Filling Compound, Cable Flooding Compound, Splice Filling Compound that are used to prevent moisture in ingress into telecommunication and power transmission cables. These compounds are said to be of highly specific configuration in order to successfully

carry out and discharge the functions as required and attain high grade electric resistance property to ensure good functioning of the field cable. The appellant had cleared 26,000/- Kgs. of Cable Filling Compound (Macogel OE-10) to their customers M/s. Benz Files Exports Pvt.Ltd. under cover of Central Excise Invoice Nos.22 dated 22.06.2008 and 25 and 26 both dated 26.06.2008. The said goods were however returned to their factory on the grounds of non-matching of requisite specifications and were entered in RG-23A Part-I for the month of June 2008. Vide their letter dated 29.06.2008, the jurisdictional authorities were also informed of the same. Para 3.3 of the show cause notice confirms the factual position to this effect. The appellant therefore took the Cenvat credit of duty paid on such goods. Subsequently as per the requirements of other customers, the goods were re-manufactured, re-processed by blending with polymer and wax/silica to attain high viscosity or by adding Base Oil to reduce viscosity and ultimately they had sold a total quantity of 27,216 Kg. of Macogel SFC, Macogel THS (C) and Macogel OE-300 manufactured out of the said 26,000 Kgs. of duty paid returned goods with addition of 255 Kgs of Atactic PP COPO, 275 Kgs. of precipitated silica and 50 kg. of silicon dioxide to customers namely M/s. Incom Cables Pvt.Ltd., M/s. Uniflex Cables Pvt.Ltd. and M/s. UM Cables Pvt.Ltd. upon payment of duty. The Anti-Evasion Wing of the Kolkata-VII Commissionerate conducted certain enquiries into this matter that culminated into the issuance of the show cause notice referred to supra charging the appellant of suppression and mis-declaration and seeking to recover the entire amount of credit availed on the said inputs received equivalent to Rs.11,24,760/- based upon enquiries and visit to the appellant's premises on 11.11.2009. Additionally in the course of subsequent visit on 01.06.2011, the authorities noticed a shortfall of certain inputs such as re-processed granules and calcium carbonate (duty involved Rs.37,343/-), which the appellant concedes and submits that the said amount has already been paid and they are prepared to pay the interest thereon as well.

3. I have heard Shri Aditya Dutta, Ld.Advocate for the appellant and Shri B.K.Singh, Ld.Authorized Representative for the Revenue in the matter.

4. Ld.Advocate for the appellant points out that they have done no wrong as far as duty of Rs. 11,24,760/- is concerned and have rightfully availed the Cenvat credit at the time of the receipt of the goods, besides also intimated to the department informing them that the said goods were returned for further re-processing, reconditioning in the factory. However for reasons best known, the department chose to remain silent in the matter and it was nearly one and half years later that the department raked up the issue, invoking the charge of suppression and mis-declaration. He submits that the fact that they had supplied copies of their RG-23A Part-I Returns clearly indicating the receipt of the said material in the month of June 2008 itself was evident enough to establish that there was no cause of suppression or mis-declaration on their part. He further submits that the Cable Filling Compound were duly cleared (for the first time) upon payment of duty itself, and necessary tax invoices were in the knowledge of the department and

were enclosed with the respective returns. It is the case of the appellant that subsequently when the goods were re-supplied after re-processing as referred supra, it was also within the knowledge of the department as the same were duly incorporated in their monthly returns and that therefore no case of suppression can be made out. In addition to the aforesaid, the Ld.Advocate also points out to the Chartered Engineer's Certificate dated 21.09.2015 pointing out that the physical and chemical properties of the various compounds such as Macogel SFC, Macogel THS (C) and Macogel OE-300 (all being Cable Flooding and Cable Filling Compounds) are of the same characteristics and applications with various viscosities and that it is easily possible to convert one compound to the other by adding raw materials like polymer oil etc. It is therefore his case that the department deliberately chose to ignore such prominent factual evidence as supplied and was available with them besides the fact of clearances being recorded in statutory records. He therefore submits that the department has deliberately chosen to ignore such evidence as staring on the face of it. Thus they contend that confirming the duty demanded in the show cause notice is *ex facie* illegal and improper. As regards the shortfall of certain products referred supra, the appellant submits that they have already paid the duty deficient and are also ready to pay interest thereon.

5. The Ld.AR for the department however supports the orders passed by the lower authorities.

6. I have perused the case records as well as the documentary evidence on record. It is noticed that the appellant at the time of first clearance of the impugned goods duly reversed the Cenvat credit that was availed by them and had issued proper tax invoices after debiting the duty on the said products. However, for whatever reasons when the goods were returned it is noticed that the appellant did inform the department in writing and subsequently has entered the said goods in their RG-23A Part-I and availed the credit in RG-23A Part-II register. These factual inputs are also part of the excise returns for the relevant periods and have been reflected in the monthly ER-1 Returns. Subsequently, when the goods have been processed, the Chartered Engineer's report confirming the re-processing and the technical aspect thereof, it belies logic to support and substantiate the case of suppression against the appellant. There is not a penny of merit in the department's case on this pretext. To my mind prima facie this is a case of frivolous litigation initiated at the behest of the department, which, ought to have been strictly eschewed in the first place as no case is apparently made out against the appellant having rendered the requisite information in ER-1 returns. So far as the shortage of stock of LDPE re-processed granules (3,000 kgs.) and calcium carbonate (7,950 kgs.) is concerned, the appellant in defence have submitted that the duty thereon for an amount of Rs.37,343/- has already been paid by them and they undertake to pay interest thereon.

7. In view of the discussion above and the fact that pursuant to the return of the goods the appellants successfully negotiated new

customers for supplying the said material on which credit was availed is borne out from records. This aspect is provided in law in terms of Rule 16(2) of the Central Excise Rules and therefore cannot be faulted upon. The department having chosen to remain silent when the intimation dated 30.06.2008 upon return of the impugned goods was conveyed, it is not open for them to rake up the matter after almost 16-17 months. Be as it may, as claimed by the appellant that they paid the duty on the said amount on account of incessant insistence by the Revenue it is settled law that any amount that is otherwise not due to the department cannot be retained by them. The department is not eligible to hold on to any amount paid by the appellant on account of misconception or fear arising out of vigorous pursuation by the departmental officers. In the facts and circumstances of the case, Revenue has not made out any case of suppression in the matter. I am therefore of the view that the said amount of Rs.11,24,760/- paid by the appellant on a charge of clandestine clearance made by the department is bereft of any valid reason thereto and cannot be sustained.

8. Under the circumstances, the Order-in-Appeal upholding the same is liable to be set aside to the said extent and is therefore quashed to that extent. For reasons thereof no case of imposition of penalty equal to the said amount under section 11AC of the Central Excise Act, 1944 is also made, in respect of the said amount.

9. In so far as shortage of certain goods noticed by the department during their visit on 11.06.2011 involving a duty amount of Rs.37,343/-

is rightly payable by the assessee and has been reportedly paid. Nonetheless the appellant is also required to pay interest thereon and equivalent amount of penalty under section 11AC on the said amount of Rs.37,343/-

10. . The appellant is directed to make good the amount of penalty and the amount of interest on the amount so upheld (refer para 9), within one month from the date of receipt of this order. The appeal is thus disposed of in aforesaid terms, with consequential benefit to the appellant, as accrues in law.

(Order pronounced in the open Court on 3 Dec. 2024)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

sm