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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 544 of 2012

(Arising out of Order-in-Appeal No. 136/Bol/2012 dated 23.05.2012 passed by Commissioner of Central Excise (Appeals), Kolkata-IV.)

M/s Jai Balaji Industries Ltd., (U-I)
(5, Bintinck Street, Jajodia Mansion Kolkata-700001.)

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
(Sian, Bolpur, Dist.- Birbhum (W.B..)

.. ...**Respondent**

APPERANCE :
None, for the Appellant
Shri P. K. Ghosh, Authorized Representative for the Respondent

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

Final Order No...75528/2025

DATE OF HEARING : 24.01.2025

DATE OF DICISION : 24.01.2025.

PER R. Muralidhar:

The appellants have been clearing the goods to their sister unit by following Rule 4 of the Valuation Rules 2000. These goods are further used by the sister unit for manufacture of dutiable goods on which Excise Duty is paid by them when they are clearing their finished goods. Taking the view that the appellant has not adopted Rule 8 of the Valuation Rules for payment of Excise Duty, a Show Cause was issued demanding the differential duty. After due process, the lower authorities confirmed the demand. Being aggrieved, the appellant has filed the present appeal before the Tribunal.

2. Today the appellant has sent written submissions when the Appeal was called for Hearing. He is requesting the Bench to consider the same as part of their arguments and decide the issue on merits.

3. On going through the written submissions submitted, we find they have contended that on identical issue, for the earlier periodical Show Cause Notices issued, the matter reached the Tribunal. This Bench vide Final Order Nos.75779 – 75790 / 2023 dated 22.06.2023, has set aside the impugned order and allowed all the appeals. They submit that on the day when the Hearing was taken up for these cases, they did not bring to the notice of the Bench that the present appeal was left out of the bunch matters. Otherwise, the facts in the present appeal are identical and they pertain to the periodical notice only which have been listed at Sl.2 to 12 of that Final Order. Therefore, relying on the decision Final Orders dated 22.6.2023, the appellant prays that the present appeal may be allowed.

4. On enquiry, the Ld AR representing the Revenue does not dispute that the issue in the present Appeal is identical and is on account of periodical notice issued and demand confirmed thereunder.

5. On going through the Final Orders dated 22.6.2023, we find that this Bench has held as under :

> 14. For appeals mentioned at Sl.No.2-12, it is the contention of the Ld.Counsel for the appellant that *the goods have been cleared*

by the appellant to their sister unit, wherein whatever duty is paid by the appellant, the same is entitled as Cenvat credit. In that circumstances, as held by the Larger Bench of this Tribunal in the case of Jai Yuhshin Ltd. (supra), wherein this Tribunal has observed as under:-

> "13. In the light of the above discussion, we answer the reference as under:
>
> (a) Revenue neutrality being a question of fact, the same is to be established in the facts of each case and not merely by showing the availability of an alternate scheme;
>
> (b) Where the scheme opted for by the assessee is found to have been misused (in contradistinction to mere deviation or failure to observe all the conditions) the existence of an alternate scheme would not be an acceptable defence;
>
> (c) With particular reference to Modvat scheme (which has occasioned this reference) *it has to be shown that the Revenue neutral situation comes about in relation to the credit available to the assessee himself and not by way of availability of credit to the buyer of the assessee's manufactured goods;*
>
> (d) We express our opinion in favour of the view taken in the case of M/s. International Auto Products (P) Ltd. (supra) and endorse the proposition that once an assessee has chosen to pay duty, he has to take all the consequences of payment of duty."

We hold that it is a revenue neutral situation.

15. As held by the Hon'ble Gujarat High Court in the case of CCE & C, Vadodara-II v. Indeos Abs Ltd. [2010 (254) ELT 628 (Guj.)], *in case the goods were cleared to their own sister concern, which is availing benefit of the Modvat Credit, hence the entire exercise is revenue neutral. Although the appellant paid differential duty later on, but same was available as Cenvat Credit to their sister unit is a revenue neutral situation, if appellant would have not paid differential duty that was not payable in terms of the above cited decisions*. Therefore, as duty was not payable, the payment of interest does not arise in the case of revenue neutral situation.

Further the case law relied upon by the Ld.AR for the department in the case of Indoworth (India) Ltd. (supra), is not applicable to the facts of the present case as in that case the appellant sought refund of interest paid on Service Tax which was not payable by the assessee.

16. In view of the above discussion, *we hold that it is the revenue neutral situation, no duty is payable by the appellant therefore whatever duty paid by the appellant Cenvat credit of the same has been availed by the sister unit, question of payment of interest does not arise.*

In view of the above discussion, the appeals mentioned at Sl.No.2-12 are also allowed by setting aside the impugned orders.

In the result, all the appeals are allowed with consequential relief.

6. Since the issue in the present appeal is identical and the confirmed demand is on account of periodical proceedings, we find that the issue has been dealt in great detail and decided by the Bench in the Final Order No.75779 – 75790/2023 dated 22.06.2023. Applying the ratio of the same, we set aside the impugned Order and allow the Appeal.

7. 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.