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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 75194 of 2014

(Arising out of Order-in-Appeal No. 45/SH/CE(A)/GHY/13 dated 10.12.2013 passed by the Commissioner (Appeals), Customs & Central Excise, Custom House, Nilamoni Phukan Path, Christian Basti, Guwahati – 781 005)

M/s. B & A Limited **: Appellant**
A/C Mokrung Tea Estate,
"Indu Bhawan", Mahatma Gandhi Road,
Jorhat – 785 001, Assam

VERSUS

Commissioner of Central Excise **: Respondent**
Shillong Commissionerate,
Morellow Compound, Mahatma Gandhi Road,
Shillong – 793 001, Meghalaya

APPEARANCE:

Shri Tarun Chatterjee, Advocate,
Assisted by Ms. Rupomita Ghosh and Ms. Sneha, Das, both Advocates,
For the Appellant

Shri S. Dey, Authorized Representative,
For the Respondent

CORAM:

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

FINAL ORDER NO. 75890 / 2025

DATE OF HEARING / DECISION: 21.03.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The facts of the case are that M/s. B & A Limited, A/C Mokrung Tea Estate, "Indu Bhawan", Mahatma Gandhi Road, Jorhat – 785 001, Assam, (hereinafter referred to as the "appellant") are engaged in cultivation of green tea leaves and manufacture of teas. In terms of Notification No. 33/99-C.E. dated 08.07.1999, exemption from payment of Central Excise duty was granted to specified goods of Factories in North Eastern states which had increased their respective installed capacity of production by at least 25% on and from 24.12.1997.

1.1. The Ld. Assistant Commissioner of Central Excise, Jorhat had approved the exemption from payment of Excise Duty to the appellant for a period of 10 years w.e.f. 01.08.2001 vide order dated 09.11.2001. No dispute was raised as regard to the refunds claimed, granted, allowed and issued from time to time strictly in terms of the provision of the said Exemption Notification.

1.2. The basic excise duty on tea was withdrawn w.e.f. 28.02.2003 and additional duty of excise was imposed. Therefore, the Exemption Notification No. 33 dated 08.07.1999 ceased to have any effect and operation on and from 01.03.2003 itself.

1.3. Section 153 of the Finance Act, 2003 amended the Notification No. 33/99-C.E. retrospectively for the period from 08.07.1999 to 22.12.2002 in the manner specified in the Eight Schedule to the Act, restricting the amount of refund eligible to the extent of duty paid less CENVAT credit availed of in respect of the duty paid on the inputs used in or in relation to the manufacture of goods cleared under the said notification.

2. Consequent to introduction of Section 153 vide the Finance Act, 2003, the Ld. Assistant Commissioner of Central Excise, Nagaon demanded a sum of Rs. 7,26,795/- vide order dated 05.06.2003 being the unutilized CENVAT credits as on 28.02.2003.

2.1. The Ld. Commissioner (Appeals), Guwahati vide Order dated 13.11.2006 had confirmed the demand ex-parte, referring to the order dated 21.09.2006 passed by the Hon'ble Gauhati High Court.

3. Thereafter, the CESTAT, Kolkata Bench vide Order dated 31.05.2007 had set aside the above order and remanded the matter for a fresh decision on the ground that the lower appellate authority had passed a blanket order without looking into factual details of each appeal.

4. The Denovo Adjudication order dated 23.05.2012 passed by the Ld. ACCE, Nagaon raised the same demand as earlier and the Ld. Commissioner (Appeals), vide the impugned order dated 10.12.2013, has upheld the same.

4.1. Aggrieved by the confirmation of the demand against them, the appellant has filed this appeal.

5. The Ld. Counsel appearing on behalf of the appellant makes the following submissions: -

(i) The Denovo Adjudication order dated 23.05.2012 is not in compliance with the order of the Tribunal dated 31.05.2007. From the purported Denovo Adjudication order it can be seen that the ld. adjudicating authority has not recorded anything about the review, nor given the basis of re-assessment and as to how he came to the conclusion that a sum of Rs.7,26,795/- is recoverable from the appellant. The ld. Assistant Commissioner at Paragraph 2.3 has recorded that: the assessee was availing the benefit of Notification No.33/99-CE, dated 08-07-1999. As per provision of section 153 of Finance Act, 2003 read with Notification No.61/2002-CE dated 23.12.2002; the entire refund claim under the Notification No.33/99-CE, dated 08-07-1999 for the period from August, 2001 to February, 2003 was reviewed and reassessed and it is found that an amount of Rs.7,26,795/- is required to be recovered from the assessee (appellant).In view of the above, it is clear that the Denovo Adjudication order dated 23.05.2012 is cryptic and unreasoned.

(ii) In the impugned order, no grounds whatsoever are recorded for recovery of Rs.7,26,795/- for that period 08.07.1999 to 28.02.2023.

(iii) Moreover, retrospective amendment only validates recovery between the period 08.07.1999 to 22.12.2002, whereas in the instant case, demand is made for the period from August, 2001 to February, 2003.Thus, the demand in the instant case has gone beyond 22.12.2002 and hence, the respondent-authority below has acted beyond the scope of clause 153 of the Finance Act, 2003, which is not permissible.

5.1. The Ld. Counsel for the appellant also pointed out that the present issue is covered by the decision of this Tribunal in their own case, as rendered in *Final order No. 75368 of 2023, dated 11.05.2023.*

5.2. In view of these submissions, the Ld. Counsel for the appellant has prayed for allowing the present appeal.

6. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

7. Heard both sides and perused the appeal records.

8. We observe that the same issue has already been examined by this Tribunal in the appellant's own case vide *Final order No.75368 of 2023, dated 11.05.2023 in Excise Appeal No. 99 of 2010 (CESTAT, Kolkata)* wherein this Bench has observed as under: -

> *"7. We find that the demand in this case has arisen due to retrospective amendment of Notification 33/99-CE dated 08/07/99through section 153 of the Finance Act 2003 . The said retrospective amendment was upheld by the Hon'ble Guahati High Court vide its Order dated 21/09/2006.The above said amendment envisaged that CENVAT Credit availed shall be payable retrospectively within a period of 30 days from the day the Finance Bill received the assent of the Hon'ble President and in the event of non payment of duty, 15% interest shall be payable from the date immediately after the expiry of the period of 30 days. Accordingly, the impugned order confirmed the demand of 5,34,865/- being the CENVAT credit lying unutilized as on 28/02/2003. It is the case of the Appellant that this demand has gone beyond what is envisaged in the retrospective amendment. The Appellant stated that the retrospective amendment only validates recovery of CENVAT Credit availed between 08/07/1999 to 22/12/2002. The demand in this case has gone beyond 22/12/2002 and sought recovery of CENVAT Credit lying unutilized as on 28/02/2003. They cited the decision of this Bench in the case of Hunwal Tea Estate Vs Commissioner of central excise, Dibrugarh where under the same facts and circumstances, the Tribunal set aside the demand and allowed their appeal. We find that the aforesaid decision in the case of Hunwal Tea Estate cited by the Appellant is squarely applicable to the facts of this case. The retrospective amendment has validated recovery of CENVAT credit availed for the period from 08/07/99 to 22/12/2002 only. Whereas, the demand in this case has gone beyond 22/12/2002 and demanded recovery of CENVAT credit availed upto 28/02/2003 which is not permissible. Accordingly, we hold that the demand in the impugned order is not sustainable and is liable to be set aside.*
>
> *8. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant."*

8.1. We find that the ratio of the decision cited *supra* is squarely applicable to the present case. Accordingly, by following the above decision, we hold that the demand confirmed against the appellant in the impugned order is not sustainable.

9. In the result, we set aside the impugned order and allow the appeal, with consequential relief, if any, as per law.

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

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd