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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 78865 of 2018

(Arising out of Order-in-Original No.04/COMM/CE/SLG/18-19 dated 16/07/2018 passed by Commissioner of CGST & Central Excise, Siliguri)

Zydus Wellness Products Limited
Earlier Known as Zydus Wellness Sikkim
(Plot No. 26, 27, 28, 30 & 37, Near Mamring
Power House, Namthang Elaka, Namchi South Sikkim
737132)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Siliguri
(C. R. Building, Haren Mukherjee Road, Hakimpara, Siliguri-734001)

Respondent

APPEARANCE :

MR. Deepro Sen & Mr. Shovit Betal, Advocate for the Appellant
Mr. P. Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE MR. K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77848/2025

Date of Hearing :27th November 2025
Date of Decision : 27th November 2025

PER R. MURALIDHAR

The appellant is manufacturer of cosmetic and toiletry products falling under Chapter 33 and 21 of Central Excise Tariff Act, 1985. The manufacturing unit is located in the State of Sikkim. They are availing area based exemption benefit under Notification No. 20/2007-CE dated 25/04/2007 by means of re-credit. During the course of audit undertaken in May 2016, they pointed out that the appellant had erroneously availed re-credit of Rs.6,30,44,259/- for the Financial year 2014-15 and Rs. 2,82,46,089/- for Financial Year 2015-16. They pointed out that in the period of two years, on eight occasions, they appellant did not fully utilize the Cenvat Credit balance but claimed the re-credit. On this ground, Show Cause Notice was issued seeking to demand Rs.9,12,20,348/-. After due process, the Adjudicating Authority

passed the impugned order confirming the demand along with interest and penalty. Being aggrieved, the appellant is before the Tribunal.

2. The Learned Counsel submits that admittedly the appellant has not fulfilled the condition specified under Notification No. 20/2007-CE dated 25/04/2007. However, even if they have taken the re-credit without exhausting cenvat credit, there is no loss to the exchequer, since the same would have been eligible for re-credit during the next month. Only during the five months, for the period 2014-15 and three months during the period 2015-16, this error has occurred. The Learned Counsel submits that similar issue had come up before the Kolkata Bench in the case of **M/s. Eminent Healthcare & Cosmetics Private Limited Vs. Commissioner of Central Excise, Guwahati, 2023 (11) TMI 1026-CESTAT Kolkata,** and the demands were set aside. Such decisions have been given by other co-ordinate Benches also. Therefore, he prays that the appeal may be allowed on merits.

3. He also takes the argument that the Show Cause Notice issued on 15/02/2018, is time barred. He submits that the Cenvat Credit was taken during the period April 2014 to November 2015. The details of Cenvat Credit taken, utilized, re-credit taken etc. were clearly shown in the Monthly Returns. Therefore, the Department could not have invoked the extended period provisions to confirm the demand.

4. The Learned AR submits that the conditions specified under Notification No. 20/2007-CE dated 25/04/2007 is a mandatory condition and not mere procedural condition. Therefore, if this condition is not fulfilled, the appellant would not be eligible for the re-credit. Therefore, he justifies the confirmed demand.

5. Heard both sides and perused the appeal papers and other documents placed before us.

6. We find force in the arguments taken by the appellant that even if some excess re-credit has been taken, this will offset by subsequently lesser re-credit being received by them for the next month. Therefore, it cannot be said that the appellant specifically gains anything or Revenue losses any duty on this count. At the most, since the re-credit has been taken before it becomes available to them, the appellant can be made to pay interest for the intervening period. However, this is not the issue raised in the Show Cause Notice. Therefore, we refrain to go into this argument. We also do not subscribe to the view of the appellant that just because there is no revenue loss, the demand can be set aside. If all the transactions are revenue neutral, there would be no necessity to specify any condition in the Notification. Once the condition is specified in the Notification to the effect that the Cenvat Credit is required to be exhausted fully, the same has to be fulfilled by the appellant. However, as we have already observed above, non-fulfillment of the condition cannot result in such huge demands made by the Revenue by dis-allowing the entire credit.

7. Coming to the point raised about the time bar aspect, we find force in argument of the appellant. The appellant has been taking the Cenvat Credit, utilizing the same and also claiming the refund which are all part of the Monthly Returns.

8. The Hon'ble Allahabad High Court in the case of **Commissioner of Central Excise, Noida Vs. Accurate Chemical Industries -2014 (310) E.L.T. 441 (All.)** has clearly held that even under the self-assessment regime, scrutiny of the Returns filed is required to be taken up and errors / contraventions, if any, are required to be pointed out. In the present case, no action was taken by the Department till the Show Cause Notice was issued on 15/2/2018 in spite of the issue being raised by the Audit in May 2016. Therefore, we hold that the confirmed demand for the extended period cannot be legally sustained. Accordingly, we set aside the confirmed demand for the extended period, interest thereon and penalty imposed and allow the appeal to this extent.

9. The appellant would be eligible for consequential relief, if any, as per law.

(Operative part of the Order was pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(K. Anpazhakan)
Member (Technical)

Pooja