CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH

Excise Appeal No. 800 of 2010

and

Excise Cross No. 5 of 2011

(Arising out of Order-in-Original No. 02/BR-02/TH-I/2010 dated 22.01.2010 passed by the Commissioner of Central Excise, Thane I)

Commissioner of Central excise, Thane I …..**Appellant**
4th Floor, Navprabhat Chambers,
Ranade Road, Dadar(W)
Mumbai

Vs.

M/s. Bombay Rayon Fashion Ltd. …..**Respondent**
Survey No. 130, Raj Rajeshwari Compound,
Sonale Village,
Bhiwandi, Thane

APPEARANCE:

Shri N.N. Prabhudesai, Supdtt, (Authorised Representative) for the appellant
Shri Darshan Ranawat, CA for the respondent

CORAM: **Hon'ble Mr C J Mathew, Member (Technical)**
Hon'ble Ajay Sharma, Member (Judicial)

FINAL ORDER No: A/86098 / 2019

DATE OF HEARING : 01.01.2019
DATE OF DECISION : 14.06.2019

PER: C J MATHEW

This appeal has been filed by Revenue against order-in-original no. 02/BR-02/TH-I/2010 dated 22nd January 2010 of

Commissioner of Central Excise, Thane I, which has confirmed the recovery of inadmissible CENVAT credit of ₹63,66,235/- that had been availed by M/s Bombay Rayon Fashions Ltd between April 2003 and September 2003, for non-imposition of penalty of like amount under rule 15 of CENVAT Credit Rules, 2004 despite confirming the demand for the extended period with the finding that the ingredients for such exists.

2. Learned Authorised Representative informs that the unit, originally operating as M/s Mudra Exports, changed its name to M/s Bombay Rayon Fashions Ltd with effect from 30th September 2004 *vide* letter dated 25th October 2004. The renamed company took over M/s BR Exports and effected merger with M/s Bombay Rayon Fashions Ltd on 24th March 2005. According to Learned Authorised Representative, even if a merged entity was entitled to discharge their duty liability by debit of CENVAT credit, accumulated by the erstwhile entities, the merger was effective only from 24th March 2005 and that it was the CENVAT credit of ₹45,47,672/- of M/s B R Exports and M/s Mudra Exports for the period prior to March 2005 that was taken in the name of M/s Bombay Rayon Fashions Ltd. It was also informed that, for the period from July 2005 to December 2005, credit of ₹1,23,923/- was availed against documents that had been issued in the name of M/s Mudra Exports which was also admitted as erroneous and reversed. Furthermore, that CENVAT

credit of ₹14,93,419/- on material that was not received by them but delivered at another place had also been wrongly availed was accepted and reversed thereon. According to Learned Authorised Representative, the acceptance of such wrong availment and rectifying reversal of the CENVAT credit would suffice to establish the deliberateness of the act.

3. We find that the issue in dispute pertains to availment of CENVAT credit on that which was allegedly, and acknowledged to be, ineligible for lack of conformity of the documents with either the name or the address of the recipient unit. Upon it being pointed, the ineligible CENVAT credit was promptly reversed. The consolidation of various entities under the name and style of M/s Bombay Rayon Fashions Ltd occurred over a period of time and it is quite probable that, during the period of transition, CENVAT credit may have been availed without proper verification. There is no doubt that the goods on which credit was so availed were indeed received in the manufacturing premises of respondent herein and only a small amount is involved in the dispute pertaining to delivery of the goods at locations other than that of the respondent. In our opinion, these are operational flaws that have occurred and the acceptance of such flaws with prompt reversal thereof by the respondent therein does not deserve a harsh detriment that is not in consonance with the gravity of the offence. Considering these factors, we do not find it necessary to

entertain this appeal of Revenue for imposition of penalty. On the contrary, we do not find any evidence of deliberate misrepresentation or suppression of fact on the part of respondent. In the absence of such evidence, it would be improper on the part of Revenue to expect the adjudicating authority to overcome the limitation prescribed in section 11A(2) of Central Excise Act, 1944 for invoking of section 11AC of Central Excise Act, 1944.

4. Considering the above, the appeal of Revenue is dismissed. Cross objection is also disposed off.

(Order pronounced in open court on 14.06.2019)

(C J Mathew)
Member (Technical)

(Ajay Sharma)
Member (Judicial)

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