CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87371 of 2013

(Arising out of Order-in-Appeal No. BR/36/M-I/2013 dated 28.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-I)

M/s Prodon Enterprises .... Appellant
302, Adharyu Inds. Estate, Sun Mill Compound,
Lower Parel, Mumbai - 400013

Versus

Commissioner of Central Excise, Mumbai-I .. Respondent
Meher Building, National Garage, Dadi Seth Lane,
Chowpatty, Mumbai – 400 007

Appearance:

Shri M.H. Sukheja, Advocate for the Appellant

Shri N.N. Prabhudesai, Authorized Representative for the Respondent

CORAM:

HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MR. S. SRIVASTAVA, MEMBER (TECHNICAL)

FINAL ORDER NO. A/86492 / 2019

Date of Hearing: 21.08.2019
Date of Decision: 21.08.2019

Per: Dr. D.M. Misra

This is an appeal filed against Order-in-Appeal No. BR/36/M-I/2013 dated 28.02.2013 passed by the Commissioner of Central Excise (Appeals), Mumbai-I.

2. Briefly stated the facts of the case are that the appellants had availed CENVAT Credit on capital goods brought to their factory in the year 2008-09. Alleging that during the course of

EA-2000 Audit, it has pointed out that the appellants are not eligible to avail CENVAT Credit on the said capital goods and directed to reverse the CENVAT Credit of Rs.51,41,758/- availed on those capital goods. Consequently, the appellant reversed the credit by debiting RG-23A Part-II account and also through cash. Later, they filed a refund claim of the amount so paid on 26.6.2012. The refund claim was returned to the appellant stating that it was premature as show-cause notice for recovery of the credit had been pending adjudication. Consequently, they submitted the refund claim again on 01.08.2012. The refund claim was rejected by the adjudicating authority. Aggrieved by the said order, they filed an appeal before the learned Commissioner (Appeals), who also rejected their appeal. Hence, the present appeal.

3. Learned Advocate Shri M.H. Sukheja for the appellant submits that the show-cause notice was issued to the appellant for recovery of the CENVAT Credit availed on capital goods with proposal to impose the penalty. It is his contention that the said show-cause notice, on adjudication, was dropped by the Commissioner vide Order No. 49/SK/M-I/2013 dated 15.1.2014 i.e. after the rejection of the present refund claim by the adjudicating authority which was on appeal confirmed by the learned Commissioner (Appeals). It is his contention that since the show-cause notice demanding the CENVAT Credit availed on the very same capital goods has been dropped and the Department accepted the order of the adjudicating Commissioner, hence the refund is admissible to them.

4. Learned AR for the Revenue fairly accepted the said submission. He, however, submits that since the order of the Commissioner dropping the demand notice came subsequent to rejection of the refund claim, hence, the matter may be remanded to the adjudicating authority to consider the application seeking claim of the refund amount afresh.

5. We have carefully considered the submissions made by both sides and perused the records. The appellant deposited an amount of Rs.51,41,758/- in pursuance to EA-2000 Audit objection relating to admissibility of CENVAT Credit availed on capital goods during the relevant period. Two proceedings have been initiated, one by filing refund of the duty by the appellant and another by way of show-cause notice issued by the Revenue seeking recovery of duty and appropriation of the credit alleged to have been wrongly availed. The proceedings initiated for recovery/ appropriation of the credit ultimately dropped by the Commissioner vide order dated 15.01.2014. In the meantime, the proceedings relating to refund claim by the appellant was decided by the learned Commissioner (Appeals) rejecting their claim. Since the adjudicating Commissioner dropped the demand notice, therefore, the order rejecting heir refund claim needs to be re-examined. Consequently, the impugned order is set aside and the matter is remanded to the adjudicating authority for fresh adjudication of their claim. Needless to mention that a reasonable opportunity of hearing be allowed to the appellant.

6. Appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(Dr. D.M. Misra)
Member (Judicial)

(S. Srivastava)
Member (Technical)

Sinha