CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86447 OF 2017

[Arising out of Order-in-Original No: 51-52/PS/COMMR/Th-II/2016 dated 30th March 2017 passed by the Commissioner of Central Excise, Thane – II.]

Everest Flavours Limited
C-104 Mhatre Pen Building, Senapati Bapat Marg
Dadar (West), Mumbai - 400028 …***Appellant***

versus

Commissioner of Central Excise
Thane – II
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Mumbai - 400028 ***…Respondent***

WITH

EXCISE APPEAL NO: 86448 OF 2017

[Arising out of Order-in-Original No: 51-52/PS/COMMR/Th-II/2016 dated 30th March 2017 passed by the Commissioner of Central Excise, Thane – II.]

Kamal R Ladsariya
Everest Flavours Limited
C-104 Mhatre Pen Building, Senapati Bapat Marg
Dadar (West), Mumbai - 400028 …***Appellant***

versus

Commissioner of Central Excise
Thane – II
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Mumbai - 400028 ***…Respondent***

AND

EXCISE APPEAL NO: 86621 OF 2017

[Arising out of Order-in-Original No: 51-52/PS/COMMR/Th-II/2016 dated 30th March 2017 passed by the Commissioner of Central Excise, Thane – II.]

Rajdhani Aromatics
Phase – I, IGC Samba, Jammu
Jammu & Kashmir 184121 …***Appellant***

versus

Commissioner of Central Excise
Thane – II
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Mumbai - 400028 ***…Respondent***

AND

EXCISE APPEAL NO: 86622 OF 2017

[Arising out of Order-in-Original No: 51-52/PS/COMMR/Th-II/2016 dated 30th March 2017 passed by the Commissioner of Central Excise, Thane – II.]

Abhay Chemicals
Plot No. 125-126, Gangyal Indl Estate, Gangyal,
Jammu & Kashmir 184133 …***Appellant***

versus

Commissioner of Central Excise
Thane – II
4th Floor, Navprabhat Chambers, Ranade Road
Dadar (West), Mumbai - 400028 ***…Respondent***

APPEARANCE:

Shri Prakash Shah, Advocate for the appellants

Shri R K Dwivedy, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: A/86471-86474/2021

DATE OF HEARING: 17/06/2021
DATE OF DECISION: 22/07/2021

PER: C J MATHEW

Assailing order-in-original no. 51-52/PS/COMMR/Th-II/2016 dated 30th March 2017 of Commissioner of Central Excise, Thane – II on behalf of four appellants – M/s Everest Flavours Ltd disputing the denial of CENVAT credit of ₹ 2,50,33,445 and ₹ 15,36,239 with consequent order of recovery of those amounts under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AB of Central Excise Act, 1944, and imposition of penalty of like amounts under section 11AC of Central Excise Act, 1944, and Shri Kamal R Ladsariya, the Director in the first appellant company, imposed with penalty of ₹ 85,00,000 and ₹ 5,00,000 along with two suppliers, M/s Rajdhani Aromatics and M/s Abhay Chemicals, of first appellant who had been imposed with penalty of ₹ 1,93,22,483 and ₹ 23,70,914 respectively under rule 26 of Central Excise Rules, 2002 - Learned Counsel contends that these should be set aside for having relied entirely on adjudication orders, that were unfavourable to several suppliers of 'menthol oil/flakes', of Commissioner of Central Excise, Jammu, since negated by the Tribunal, for not having considered the submission that their entitlement to CENVAT credit was unquestionable in the light of recovery of duty ordered in those proceedings, for discarding the documentary evidence of receipt of raw materials furnished in response to the notice and for having disregarded the bar on invoking of the extended period. The impugned proceedings originated in one notice pertaining to supplies claimed to have been effected by M/s Gaurav Agrochem Industries, M/s Rajdhani Aromatics and M/s Abhay Chemicals and two notices pertaining to supplies claimed to have been effected by M/s Khazana Corporation between November 2007 to February 2008.

2. The first appellant claims to be an exporter of ‘menthol crystals’ for the production of which supplies of ‘menthol oil/flakes’ had been procured from several entities purportedly manufacturing these in Jammu - an area privileged with the incentive scheme for promotion of industrial activity enabling promoters to claim reimbursement of duties of central excise to the extent of ‘value addition’ upon recovery from buyers and deposit with the exchequer - on payment of duties of central excise that was credited in their CENVAT account. On investigations that culminated in issue of notices to these suppliers who, besides claiming reimbursement, had also availed CENVAT credit on inputs procured by them allegedly without the wherewithal to undertake such manufacture, the first appellant, as a recipient of the allegedly ‘non-existent’ production, was issued with notices referred to *supra* for liabilities therewith.

Following the confirmation of the allegations in the proceedings initiated in the jurisdiction of Commissionerate of Central Excise, Jammu, the proceedings leading to the impugned order were also concluded in the manner described above.

3. Learned Counsel for appellants submits that the denial of CENVAT credit is predicated entirely upon the adjudication effected by the Commissioner of Central Excise with jurisdiction over the four suppliers of the first appellant herein following an investigation conducted jointly by that authority as well as the Commissioner of Central Excise, Meerut having jurisdiction over the suppliers of inputs procured by the four business concerns indicted as liable to penalty in the order impugned before us. Our attention has been drawn to a substantial portion of the impugned order comprising, as it does, of substantial portion of those proceedings as extracts therein. It was also pointed out that such reliance was inappropriate as the corresponding show cause notices did not rely upon those adjudication proceedings that were, as yet, pending. We do not find ourselves inclined to assume that dwelling upon those extracts is of particular necessity in the light of submission tendered by Learned Counsel that all of those had been set aside by the Chandigarh bench of the Tribunal. Suffice it to state, at this stage, that of the refund of ₹ 10,60,34,890 for the period from November 2005 to December 2009 ordered to be recovered from M/s Gaurav Agro-Chem Industries, the credit availed

by the first appellant herein is limited to ₹ 33,40,048, of ₹ 4,80,32,282 for the period from August 2006 to January 2010 ordered for recovery from M/s Rajdhani Aromatics, the impugned order is limited to credit of ₹ 1,93,22,483 availed by the first appellant herein, of the ₹ 11,34,76,636 ordered for recovery from M/s Abhay Chemicals for the period from January 2006 to March 2008, the impugned order is limited to credit of ₹ 23,70,914 availed by the first appellant herein and of ₹ 1,11,38,353 ordered to be recovered from M/s Khazana Corporation for the period from October 2007 to April 2008, the impugned order is limited to credit of ₹ 15,36,239 availed by the first appellant herein.

4. Learned Authorised Representative submits that the decision of the Tribunal insofar as the suppliers are concerned is not relevant to the proceedings initiated against the recipient of the inputs and, with that decision awaiting further appellate determination, is no precedent for setting aside the demand against the first appellant herein. It is also contended that the Hon'ble Supreme Court had, in *Union of India and another v. VVF Ltd [(2020) SCC Online SC 378]*, been particularly critical of the undue advantage taken in ways that had not been envisaged under the area-based exemption policy. Learned Counsel argued that this decision, on the sanctity of promulgation of such geographically delimited harbours of privilege, bore no connect with the facts of the present dispute.

5. That one of the factors relied upon in the impugned order for upholding the demands, and imposing the detriments, on the first appellant is the adjudication by the jurisdictional authority concerned, for recovery of refunds that manufacturers are entitled to on the finding that such facilities for production did not exist, is not controverted by Learned Authorised Representative. Though the first appellant herein had been placed on notice of the intention to recover refund from their suppliers for alleged suppression of incapacity to manufacture, the subsequent developments in those proceedings were not; the reliance placed by the adjudicating authority in the impugned order could well be said to have taken place behind the back of the first appellant and, thereby, straining the credibility, conferred by adherence to principles of natural justice having been applied, to the impugned proceedings. Furthermore, the setting aside of those very demands in the main and, to lesser extent, in the remanded matter, nullifies correctness of the findings in the impugned order. In putting forth that unarguable proposition, Learned Counsel fairly accepts that the decision of the coordinate bench is not cited for invoking *stare decisis* but to emphasize that the rationale of consequent detriment is without firm foundation. It is not the case made on behalf of the appellants that the proceedings in the Jammu jurisdiction, as well as that before the coordinate bench, were concerned with the facts pertaining to operations of the first appellant herein and, therefore, the

plea of Learned Counsel that the impugned order should be set aside in like manner is not convincing. Accordingly, we take up the other grounds, each of which may have the effect of closing the present dispute before us, for evaluation.

6. It is common ground that the first appellant had furnished the documents issued by transporters as evidence of receipt of inputs at their facility. However, it is seen from the impugned order that the veracity, or lack thereof, of these had not been a determining factor in the proceedings before the adjudicating authority. There is, no doubt, that claims of such transfer should have been subjected to scrutiny through the appropriate authorities even in circumstances of an adjudication order determining that suppliers could not have provided the first appellant herein with the required inputs. More so, as it was not considered necessary that these proceedings be a part and parcel of that initiated against the suppliers. The want of such separate ascertainment strains the credibility of the determination in the impugned order.

7. Learned Counsel has also submitted that the extended period of limitation could not have been invoked as the returns pertaining to availment of CENVAT credit as well as the intimation pertaining to export consignments were demonstratively unambiguous about the source of the inputs. That, in our view, is not an issue that can be

decided by us in the absence of such a submission having been made before the original authority and we are, thereby, hampered in determining the correctness, or otherwise, of the adjudicating authority deciding upon its own competence to recover the duties in the extended time-frame.

8. We find from the record of proceedings that the several independent arguments for setting aside the demand of duties, and the imposition of detriments, was disregarded by the adjudicating authority on the assurance of the finding of lateral jurisdiction on goods not having been supplied. It would, therefore, appear that the adjudicating authority was influenced entirely by the finding of non-manufacture on the part of the supplying units by the coordinate statutory functionary which ceases, owing to nullification by the coordinate bench of the Tribunal, to sustain the impugned order in the absence of any other limb.

9. In the circumstances of these facts as well as the non-consideration of several contentions put forth on behalf of the appellants, the impugned order does not commend itself as redolent of the essential qualifications of being legal and proper. At the same time, the nature of the controversy does not lend itself to disposal of the allegations as being legally untenable. The proper course of action, in our view, is that the matter be remanded to the original authority for

a fresh determination of the conclusions leading from the evidence available on record. It is our fervent hope that the adjudicating authority will redeem itself by appropriate application of the principles of natural justice to the dispute that is now returned. To enable that consummation, we set aside the impugned order and direct the adjudicating authority to determine the issues afresh in accordance with statute as enacted and precedent as judicially established.

(Order pronounced in the open court on 22/07/2021)

(Ajay Sharma)
Member (Judicial)

(C J Mathew)
Member (Technical)

**/as*