CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH

Excise Appeal No. 824 of 2008

(Arising out of Order-in-Original No. 16/CEX/2008 dated 30.04.2008 passed by the Commissioner of Central Excise & Customs, Nashik)

M/s. Ceat Ltd. **Appellant**
463, Dr. Annie Besant Road,
Worli, Mumbai 400 030.

Vs.

Commissioner of Central Excise, Nashik **Respondent**
Kendriya Rajaswa Bhavan,
Gadkari Chowk, Nashik 422 002.

Appearance:

Shri Rajesh Ostwal, Advocate, for the Appellant
Shri Mohd. Shamshad Alam, Additional Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)
HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. **A/86669/2021**

Date of Hearing: 11.08.2021
Date of Decision: 11.08.2021

PER: SANJIV SRIVASTAVA

This appeal is directed against order in original No. 16/C.Ex/2008 dated 30.04.2008 of the Commissioner of Central Excise, Nashik. By the impugned order, the Commissioner held as follows:-

1. *"I disallow the cenvat credit of Rs. 5,07,95,640/- (Rupees five crore seven lakhs ninety five thousand six hundred forty only) under Rule 14 of Cenvat Credit Rules and order that the amount of cenvat credit availed under head AED (GSI) should be reversed immediately.*
2. *I order for recovery of interest at the applicable rates under section 11 AB of Central Excise Act, on the amount of AED (GSI) wrongly availed in contravention of Rule 14 of Cenvat Credit Rules.*

3. *I impose a penalty Rs. 5,07,95,640/- (Rupees five crore seven lakhs ninety five thousand six hundred forty only) on M/s CEAT Ltd, MIDC, Satpur, Nashik under Sub Rule (2) of Rule 15 of Cenvat Credit Rules read with section 11AC of Central Excise Act."*

2.1 The appellant is manufacturers of tyres and tubes falling under Chapter 40 of the First Schedule to the CETA, 1985, were availing credit of duty paid on nylon cord fabrics purchased by them and used in the manufacture of tyres. Such fabrics attracted duty under the Additional Duty of Excise (Goods of Special Importance) Act, 1957.

2.2 Notification 5/94-CE dated 01/03/1994 was amended vide the Notification 08/94-CE dated 27/06/1994 so as to permit availment of modvat credit of Additional Excise Duty only for utilization towards payment of excise duty leviable under the Additional Duty of Excise (Goods of Special Importance) Act, 1957 on the final products.

2.3 The above position continued even after the introduction of the Cenvat Credit Rules, 2002 until the amendment to Rule 3(6)(b) of the Cenvat Credit Rules, 2002 by Notification 13/03-CE dated 01/03/2003 by which restriction regarding utilization of credit of AED (GSI) for payment of AED (GSI) only was removed and AED credit could be utilized for payment of other type of excise duty such as BED and SED.

2.4 As per explanation substituted for the explanation to Rule 3(6)(b) of the 2002 Cenvat Credit Rules duly amended w.e.f. 01/03/2003, credit of Additional Duty of Excise under AED (GSI) Act, 1957 and paid on or after 11/04/2000 only was permitted to be utilized towards payment of excise leviable under the First Schedule or the Second Schedule to the CETA,1985. In other words cenvat credit availed prior to 01.04.2000 was not available for utilization towards payment of BED and SED on the final products.

2.5 The appellants paid the AED (GSI) credit utilized and then simultaneously availed credit of Rs. 5,07,95,640/- which the Revenue finds to be inadmissible and is, therefore, a show cause notice dated 21.05.2007 was issued .

2.6 This show cause notice was adjudicated by the Commissioner as per impugned order referred to in para 1, supra.

2.7 Aggrieved by the order appellants have preferred this appeal

3.1 We have heard Shri Rajesh Ostwald, Advocate for the appellants and Shri Mohd. Shamshad Alam, Additional Commissioner, Authorized Representative for the revenue.

3.2 Arguing for the appellant, learned Counsel submits that the issue involved in the matter is no longer res-integra. In their own case reported at [2010 (254) ELT 349 (T-Mum)] same issue has been decided holding in their favour. This order of tribunal was upheld by the Hon'ble Bombay High Court as reported at {2013 (298) ELT 525 (Bom)]. Following the order of CESTAT and Hon'ble Bombay High Court, Commissioner has vide his order dated 16.01.2019 dropped all the pending show cause notices on the same ground. Thus this appeal may be allowed in his favour.

3.3 Learned Authorized Representative re-iterates the findings recorded in the impugned order.

4.1 We have considered the impugned order along with the submissions made in appeal and during the course of argument.

4.2 We find the issue to be squarely covered by the order of Hon'ble Bombay High Court in the case of Appellants as submitted by the learned Counsel. While deciding the issue in favour of Appellants Hon'ble High Court has observed as follows:

"6. Apart from the above, we have also looked into the merits of the order of the CESTAT. By the impugned order the CESTAT upheld the order of Commissioner of Central Excise dropping the show cause notice demanding an amount of Rs. 6.83 crores from the respondent-assessee being the amount of suo motu credit of Additional Excise Duty (AED) after having paid the same to the Revenue as the credit on AED could not be utilized for payment of Basic duty of Excise but only be utilized for payment of AED. This was done by retrospective amendment in 2004. Therefore, the AED credit utilized was paid into the revenue through PLA and the original AED credit for payment of Basic Excise Duty was suo moto taken by the respondent and upheld by the

Commissioner of Central Excise. The CESTAT in the impugned order holds as follows:-

"The impugned credit had been legitimately earned by the assessee on procurement of inputs on payment of duty and used for payment of duty following the amendment of Cenvat Credit Rules under Budget 2003. Vide Circular No. 7/16/2003-CX., dated 6-3-2003, the C.B.E. & C. had also clarified that it was considered appropriate not to put any cap on the use of the AED (GSI) credit accruing prior to 1-3-2003. In terms of the provisions enacted in Finance Act, 2004, the debits were held not amounting to payment of duty and the assessee was required to meet the same obligation by payment from PLA. In the instant case, the debits were held to be of no consequence when the assessee was required to pay duty initially discharged using AED (GSI) credit. Therefore, the credit needed to be restored and was correctly ordered so by the Commissioner. We find considerable merit in the finding of the Commissioner that but for the statutory changes introduced with effect from 1-3-2003 following which the assessee had discharged the duty liability on tyres using AED (GSI), it would have continued to have the impugned credit in its account. We also find that the Commissioner correctly held that the respondent had taken the impugned credit under valid duty paying documents under cover of which inputs had been received. Accordingly, we sustain the impugned order and reject the appeal filed by the Revenue."

7. Learned counsel for the appellant has relied upon the decision of the Larger Bench of the CESTAT in BDH Industries Ltd. v. Commissioner of Central Excise (Appeals), Mumbai, 2008 (229) E.L.T. 364. The said decision has already been considered by CESTAT in the impugned order and it has been distinguished as inapplicable. The CESTAT held that the ratio of the said case relates to excise duty paid and the procedure to be followed for getting back such excess duty paid and has no application in this case as there is no issue of refund but only restoring the AED credits taken prior to 1 April, 2000. The learned counsel for the Revenue is unable to point out why the distinction made by CESTAT in the impugned order is incorrect."

4.3 In view of the decision of Hon'ble High Court we do not find any merits in the impugned order and set it aside.

5. Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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