CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 86682 of 2013

(Arising out of Order-in-Appeal No. BC/484/M-III/2012-13 dated 27.12.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III.)

M/s. Cipla Ltd. ....Appellant
L.D. Building, Mehra Industrial Estate,
Asha Usha Compound, L.B.S. Marg,
Vikhroli (W), Mumbai – 400 079

VERSUS

Commissioner of Central Excise, Mumbai-III ....Respondent
3rd & 4th Floor, Vardaan Centre,
MIDC, Wagle Industrial Estate,
Thane (West), Mumbai – 400 604

APPERANCE:

Shri Rajesh Ostwal, Advocate for the Appellant

Ms. A.S. Parab, Assistant 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/86743 / 2021

Date of Hearing: 10.08.2021
Date of Decision: 10.08.2021

PER: DR. SUVENDU KUMAR PATI

Confirmation of demand against erroneous availment of CENVAT credit along with interest and penalty by the Commissioner of Central Excise (Appeals), Mumbai-III vide Order-in-Appeal No. BC/484/M-III/2012-13 dated 27.12.2012 is assailed in this appeal.

2. Learned Counsel for the appellant submitted that show-cause notices as has been consolidated at page 209 of the appeal memo, clearly reveal item wise beak-up and duty demand that has been confirmed in the Order-in-Original and Order-in-Appeal but he fairly conceded that except in item no. 3 concerning wrong availment of CENVAT credit of Rs.54,569/- on the basis of bills/tax invoices issued before the date of service tax registration, in respect of all other show-cause notices demands have been met with interest much prior to issue of show-cause notices for which penalty is not imposable. He further brought it to our notice that it was basically a technical error as credit of one factory was taken in another factory of the same appellant but it was never utilised, for which adjudication proceeding was uncalled for.

3. Learned Authorised Representative for the respondent-department conceded to the factual aspect of the case in hand but supported the reasoning and rationality found in the Order-in-Appeal.

4. We have perused the case record and found that invariably in all show-cause notices, it has been clearly mentioned that on being pointed out by Audit the assessee had reversed/paid CENVAT credit wrongly taken and availed by them in their service tax register. It appears that only register entry concerning availment of CENVAT credit was made and it was reversed without utilisation. Record also

reveals that appellant had enough credit in its account and it is a settled position of law that interest & penalty are not payable in such a scenario. However, demand in respect of availment of CENVAT credit at Sr. No. 3, as reproduced in the preceding para, would sustain in view of the fact the same has not been realised. Though not argued, it has been pleaded in the appeal memo that on the basis of Range Superintendent reports, copy of which was not given to the appellant to ensure natural justice, Order-in-Original was passed for which we also set aside the penalty imposed against the confirmation of demand at Sr. No. 3. Hence the order.

ORDER

5. The appeal is allowed in part, setting aside penalty in respect of the consolidated demand at page 209 and we upheld the demand of Rs.54,569/- in respect of Sr. No. 3 without penalty.

(Pronounced in the open court)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Sanjiv Srivastava)
Member (Technical)

Prasad