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

Excise Appeal No. 1213 of 2012

(Arising out of Order-in-Appeal No. BC/400/M-III/2011-12 dated 30.03.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s. Santogen Exports Ltd. **Appellant**
Vill. Tambati, Khopoli-Pen Road,
P.O. Danvat, Tal. Khalapur,
Dist. Raigad.

Vs.

Commissioner of Central Excise & ST, Raigad **Respondent**
Utpad Shulk Bhavan, Plot No.1, Sector 17,
Khandeshwar, Navi Mumbai 400 614.

Appearance:

Shri Prakash Shah, Advocate, for the Appellant
Ms. Anuradha Parab, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 15.03.2022
Date of Decision: 15.03.2022

FINAL ORDER NO. A/85231/2022

PER: SANJIV SRIVASTAVA

This appeal is directed against Order-in-Appeal No. BC/400/M-III/2011-12 dated 30.03.2012 of the Commissioner of Central Excise (Appeals), Mumbai-III. The case was taken up by the Commissioner (Appeals) in the matter remanded by this Tribunal vide order No. A/23/11/EB/C-II dated 03.01.2011 stating as follows:-

"3. After giving careful consideration to the submissions, we have found serious infirmities in the impugned order, The show-cause notices raised serious allegations against the assessee and proposed to deny the benefit of Notification No.30/04-CE ibid to them. One of the show-cause notices raised the serious allegation of "suppression of facts with intent to evade payment of duty, against the party, and invoked the extended period of limitation for recovery of duty from them. All the show-cause

notices sought to recover interest on duty also. There were also proposals for imposition of penalties on the noticee. All the proposals were dropped by the original authority. In this scenario, the Id. Commissioner (Appeals), while dealing with the Revenue's appeal, should have entered into the shoes of the adjudicating authority and done the needful. Unfortunately, this did not happen in the present case. The ld. counsel has also clearly acknowledged this infirmity of the lower appellate proceedings. This provides the first ground for remand. As the original, authority was holding totally in favour of the assessee on merits, it did not examine the plea of limitation raised by them. This plea was reiterated before the Commissioner (Appeals) by the assessee, but the same went unheeded. The impugned order does not disclose that the plea of limitation was examined. Today, the ld. Counsel has submitted that the appellant was filing their RT.12 returns periodically disclosing all the relevant facts to the department. The relevant invoices clearly declared that the assessee was claiming the benefit of Notification 30/04-CE. The relevant extracts from RG 23 A Part II accounts were also filed along with the returns. Thus, the question whether the appellant did or did not avail CENVAT credit on their inputs which were used in the manufacture of Terry Towels cleared without answerable payment of duty was clearly answerable from the records placed by them before the department from time to time. In other words, no material fact was suppressed before the department, let alone with intent to evade payment of duty. In this scenario, according to the ld. counsel, the extended period of limitation was not applicable in this case. We find that this case of the appellant was not examined by the Id. Commissioner (Appeals). This is the second reason why we have decided to remand the case."

2.1 The appellant was issued three show cause notices as detailed in the table below:-

S. No.	SCN No. & Date	Period	Amount (in Rs.)
1	V(11A)Adj21-2 COMMR/RGD/06-07 dated 22.06.2006.	October 2004 to October 2005	44,47,765/-

2	V/Adj(SCN)15-122/RGD/06 dated 04.12.2006	November 2005 to June 2006	22,66,346/-
3	V/Adj(SCN)15-25/RGD/07-08 dated 31.07.2007	July 2006 to December 2006	13,80,977/-

2.2 These show cause notices were adjudicated by the Additional Commissioner vide his Order-in-Original No. Raigad/ADC/104 to 106/07-08 dated 31.03.2008 dropping the demands raised by the show cause notices while appropriating the interest under Section 11AC of the Central Excise Act. This order was challenged by the Revenue before the Commissioner (Appeals) who set aside the order of the original authority and allowed the appeal. The appellant came before the Tribunal and vide the order referred in para 1 above, the matter was remanded back to the Commissioner (Appeals) for reconsideration of the matter. Vide the impugned order, the Commissioner (Appeals) has decided the matter in remand proceedings.

2.3 The appellant started availing exemption under Notification No. 30/2004-CE from October 2004 onwards. The condition for availing full exemption was that the appellant should not have taken any cenvat/modvat credit on the inputs used. The appellant was maintaining separate input record for major input i.e. yarn used for manufacture of exempted and duty paid goods. The credit in respect of other inputs, viz. packaging materials and dyes and chemicals was reversed by them either on monthly basis or on consignment wise basis at the time of clearance of the exempted goods. Only the in respect of furnace oil used in dutiable and exempted goods for the period from 14.10.2004 to 06.08.2005 was reversed/paid proportionately by the appellant on a later date i.e. 31.12.2005. Subsequently from 06.08.2005 they reversed the cenvat credit on furnace oil, also on consignment basis. The Commissioner (Appeals) has held undoubtedly that from 06.08.2005 onwards the appellant has fulfilled all the conditions of the exemption notification and hence the demands raised for the period from 06.08.2005 onwards cannot be sustained. Therefore the dispute in this case is limited for the period prior to 06.08.2005.

3.1 We have heard Shri Prakash Shah, Advocate, for the appellant and Ms. Anuradha Parab, Assistant Commissioner, Authorised Representative, for the Revenue.

3.2 Arguing for the appellant, learned counsel submits that:

- The issue in the present case is squarely covered by a number of decisions of the Courts/Tribunal as follows:-
  - Hello Minerals Water (P) Ltd. [2004 (174) ELT 422 (All.)]
  - Mangal Textile Pvt. Ltd. [2014 (311) ELT 707 (Tri.-Ahmd.)]
  - Foram Glazed Tiles [2011 (267) ELT 461 (Guj.)]
  - Precot Meridian Ltd. [2015 (325) ELT 234 (SC)]
  - Sanjay Engineering Industries [2016 (43) STR 354 (Raj.)]
  - Tree House Hotel Club & SPA [2017 (4) GSTL 39 (Tri)]
  - Indian Oil Tanking Pvt. Ltd. [2017 (6) GSTL 417 (Tri.-Mumbai)].
- Undisputedly, even in case of furnace oil the appellant has reversed the entire cenvat credit along with the interest due subsequently. Hence it is not the case that they were not fulfilling the condition of the notification.
- As has been held in the above referred decisions, Courts/Tribunal has consistently allowed the benefit of such exemption notification even if the credit has been reversed subsequently.
- Accordingly the learned counsel urged that the appeal be allowed in his favour.

3.3 Learned Authorised Representative reiterates the findings of the Commissioner (Appeals) in the impugned order.

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

4.2 We find that the issue is squarely covered by the decision of this Tribunal in the case of Mangal Textile Pvt. Ltd. [2014

(311) ELT 707 (Tri.-Ahmd.)] wherein the Bench has held as follows:-

"The appellants are engaged in manufacture of cotton fabrics, man-made fabrics and knitted fabrics etc. During the relevant period, they were enjoying the benefit of exemption in terms of Notification No. 29/2004-C.E. and No. 30/2004-C.E., both dated 9-7-2004. Notification No. 29/2004-C.E. provides for concessional rate of duty subject to availment of credit, whereas the Notification No. 30/2004-C.E. provides for concessional rate of duty subject to the condition that no credit has been taken under the provisions of Cenvat Credit Rules, 2002.

2. *The appellants had originally availed the MODVAT Credit in respect of entire input used in the manufacture of final product cleared under Notification No. 29/2004-C.E. as also Notification No. 30/2004-C.E. The short question required to be decided in the present appeal is that whether subsequent reversal of credit in respect of clearances effected in terms of Notification No. 30/2004-C.E. would satisfy the condition of notification or not.*

3. *The adjudicating authority, in his impugned order, has accepted the fact that the appellant have subsequently reversed the credit of Rs. 14,37,294/- (the reversal being less by an amount of Rs. 32,659/-). However, such reversal of credit has not been held to be satisfying the condition of notification, on the ground that such reversal was subsequent to clearance of the goods during the period from July 2004 to October 2004 and was delayed by more than 15 months. The Commissioner has also observed that there was a short reversal of Rs. 32,659/-. As such, he has held that the condition of notification cannot be said to have been satisfied. Accordingly, he has confirmed the demand of duty along with confirmation of interest and imposition of penalties.*

4. *We find that in terms of Hon'ble Supreme Court's judgment in the case of M/s. Chandrapur Magnet (Wires) Pvt. Ltd. v. CCE, Nagpur, 1996 (81) E.L.T. 3 (S.C.), reversal of credit of duty originally availed would amount to as if no credit was availed, thus satisfying the condition of Notification. However,* *Commissioner has observed that in the above judgment such reversal of credit was made before clearance of the goods. Inasmuch as in the present case, such reversal is subsequent to the clearance of the goods, the same cannot be accepted.*

5. *We find that the issue before Hon'ble Supreme Court in the case of M/s. Chandrapur Magnet (Wires) Pvt. Ltd. was not about reversal being prior or after the removal. The dispute before the Hon'ble Apex Court was as if such reversal would amount to as if no credit was availed. It was under these circumstances that the expression "reversal by the appellant before clearance of the product" was used. We further note that the Tribunal in case of M/s. Ashima Dyecot Ltd. has held that the reversal even at the time of disposal of the appeal before Tribunal, would amount to satisfaction of the condition. The said decision of the Tribunal stand confirmed by Hon'ble High Court of Gujarat as reported in 2008 (232) E.L.T. 580 (Guj.) = 2008 (12) S.T.R. 701 (Guj.). The appeal filed by the Revenue against the above decision stand rejected by Hon'ble Supreme Court as reported in 2009 (240) E.L.T. A41 (S.C.). We further note that Hon'ble High Court of Gujarat has also approved the Tribunal's decision in the case of M/s. Maize Products as reported in 2009 (234) E.L.T. 431. M/s. Maize Products offered to reverse the Cenvat Credit at the appeal stage before Tribunal and such offer to reverse was accepted by the Tribunal. The Hon'ble High Court of Gujarat approved the above course adopted by the Tribunal.*

6. *Similarly, we find that Hon'ble High Court of Allahabad in the case of M/s. Hello Minerals Water (P) Ltd. v. UOI as reported in 2004 (174) E.L.T. 422 (All.) has observed that the benefit of Notification granting exemption on the final product has to be extended even if the reversal of credit on the input was done at the Tribunal's stage. The Hon'ble High Court further observed that reversal of credit for availing benefit of the notification is important and the time of such reversal was immaterial. As such, the Tribunal was not justified in taking a view that reversal of credit having been made by the petitioners after removal of final product will make him dis-entitled to the benefit of Notification No. 15/94-C.E. involved in that case. The appellant* *having reversed the major part of the credit and having offered to reverse the balance credit, would be entitled to benefit of Notification No. 30/94, in the light of the law declared in the above decision. It may be mentioned here that as per the appellant such credit was lying in their books of account and was not utilized, in which case, no interest or penalty can be upheld against them.*

7. *In view of the above, the impugned order is set aside and appeal allowed with consequential relief to the appellant."*

4.3 Hence we find that the issue is squarely covered in favour of the appellant. We have no hesitation in allowing the appeal filed by the appellant in this case also.

5.1 Appeal is allowed.

(Order pronounced in the open court)

(Sanjiv Srivastava)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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