CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Miscellaneous Application No. 85665 of 2018
(on behalf of Appellant/Respondent)

In

Excise Appeal No. 86393 of 2014

(Arising out of Order-in-Original No. 37/RN/COMMNR/M-II/2013-14 dated 11.02.2014 passed by the Commissioner of Central Excise, Mumbai-II)

M/s Hindustan Petroleum Corporation Ltd. .... Appellant

Versus

Commissioner of Central Excise, Mumbai-II.... Respondent

Appearance:

Shri M.H. Patil, Advocate for the Appellant

Md. Shamshad Alam, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85860/2022

Date of Hearing: 14.01.2022

Date of Decision: 14.01.2022

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 11.02.2014 passed by the learned Commissioner of Central Excise, Mumbai-II wherein proposed Central Excise duty demand of Rs. 7,08,34,439/- along with interest was confirmed and equal amount of penalty was imposed on the appellant. The issue involved in this appeal relates to reversal of proportionate

CENVAT Credit availed on inputs/input services attributable to the exempted goods.

2. Briefly stated, the facts of the case are that the appellant herein is engaged in the manufacture of petroleum products, falling under Chapter 47 of the Central Excise Tariff Act, 1985. The appellant availed CENVAT Credit of Central Excise duty paid on capital goods, inputs and Service Tax on the input services under Rule 3 of the CENVAT Credit Rules, 2004. During the disputed period from April, 2004 to March, 2009, the appellant had cleared the excisable goods namely, Naftha, LSHS, LPG, Kerosene oil at NIL rate of duty, by claiming the exemption provided under various notifications issued by the Government of India. Since the appellant was engaged in the manufacture of both dutiable and exempted goods, it was required to observe the procedures laid down under Rule 6(3) of the CENVAT Credit Rules, 2004. In the present case, the Department had observed that such procedures laid down in the statute have not been followed by the appellant in respect of the exempted goods manufactured by them. Accordingly, show-cause proceedings were initiated by the Department for recovery of the CENVAT Credit in respect of inputs and input services utilized for manufacture of the exempted goods. The matter arising out of the show-cause notice dated 07.05.2009 was culminated into the adjudication order dated 15.03.2011, wherein the adjudicating authority had confirmed the Cenvat demand of Rs.33,43,85,220/- along with interest and also imposed equal amount of penalty on the appellant. The said order dated 15.03.2011 was appealed against by the appellant before the

Tribunal, which was disposed of by the Tribunal vide Order No. A/349/12/EB/C-II dated 17.04.2012 by way of remand to the adjudicating authority. Pursuant to the order of the Tribunal, the original authority took up *de novo* proceedings and passed the present impugned order dated 11.02.2014. In support of confirmation of the adjudged demands, the learned adjudicating authority has held that the show-cause proceedings initiated for the period 2004-05 and 2005-06 are within the normal period prescribed under Section 11A of the Central Excise Act, 1944 and as such, is not barred by limitation of time as claimed by the noticee/appellant. For the period 2006-07 and 2007-08, he has dropped the duty demand, holding that the show-cause notice issued for such period was barred by limitation of time inasmuch as the extended period of limitation of five years in such case shall not be invocable. In respect of the period 2008-09, the learned adjudicating authority has confirmed the demand under the normal period, holding that the proceedings are not barred by limitation of time. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

3. Shri M.H. Patil, learned Advocate for the appellant submitted that the show-cause proceedings initiated by the Department for the period 2004-05 and 2005-06 are barred by limitation of time inasmuch as the said proceedings were initiated beyond the normal period of one year prescribed under sub-section (1) of Section 11A ibid. He further submitted that since there is no element of fraud, suppression, willful mis-statement etc., the extended period of limitation provided under the proviso clause to Section 11A ibid cannot be invoked. In this

context, he has relied upon various show-cause notices issued by the Department, alleging recovery of CENVAT demand in respect of the disputed products removed in availing the benefits under the exemption notifications. He also submitted the statutory records maintained by the appellant, indicating removal of the exempted goods and proportionate reversal of the CENVAT Credit attributable to such exempted goods. With regard to the Cenvat demand confirmed for the period 2008-09, learned Advocate submitted that the quantum of CENVAT Credit reversed by the appellant was much more than the amount of credit actually reversible under Rule 6 ibid. He also submitted that the requirement of reversal of credit prescribed under the statute has not been properly considered by the original authority. As regards confirmation of the Cenvat demand, the learned Advocate submitted that such computation by the original authority was erroneous. As regards payment of interest, the learned Advocate submitted that since the appellant had maintained sufficient balance in the CENVAT account during the entire period of dispute, there is no loss of Revenue to the exchequer and thus, there is no question of payment of any interest by the appellant. Learned Advocate also pleaded that the provisions of Rule 15 ibid read with Section 11AC ibid cannot be invoked in absence of any *mala fide*s on part of the appellant in defrauding the government Revenue.

4. On the other hand, learned AR Shri Md. Shamshad Alam appearing for the respondent/Revenue reiterated the findings recorded in the impugned order and further submitted that since

the show-cause notice referred to by the appellant has not dealt with manufacture and removal of the exempted goods by the appellant, the Department was not aware of the activities undertaken by them and that since upon acquiring of such knowledge of manufacture, the show-cause notice was issued with the normal period from the date of such knowledge and as such, the show cause proceedings cannot be treated as time barred. With regard to the period 2008-09, learned AR submitted that since the appellant had not submitted the relevant records at the time of adjudication of the issue, there was no scope or occasion for the adjudicating authority to consider the submissions made by the appellant in the appeal filed by it. Thus, he prayed for remanding the issue to the original authority for proper fact findings on the submissions made by the appellant at this juncture.

5. Heard both sides and examined the case records.

6. From the submissions made by learned Advocate for the appellant, it transpires that the issue of time barred demand has not been considered by learned adjudicating authority at the time of passing the *denovo* adjudication order. Further, learned AR for Revenue has also pleaded that the documentary evidences were produced by the appellant before the Tribunal for the first time, which were not dealt with during the course of adjudication proceedings before the original authority. He also pleaded for remanding the matter to the original authority for appreciation of proper evidence. Thus, under such circumstances, we are of the view that the matter should go back to the original authority for consideration of the

submissions made by both sides before the Tribunal, especially with regard to the aspect of limitation, erroneous computation of the adjudged demands etc.

7. Therefore, by setting aside the impugned order, the matter is remanded to the original authority for consideration of the evidences submitted by both sides before the Tribunal. Needless to say, that opportunity of hearing should be granted to both sides for presenting their case in effective manner for proper adjudication by the original authority.

8. In the result, the appeal is allowed by way of remand. Miscellaneous application filed by the appellant is disposed of.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha