CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH - COURT NO. 01

Excise Appeal No. 87954 of 2019

(Arising out of Order-in-Appeal No.PVNS/177/Appeals-II/MC/2019 dated 18th June 2019 passed by Commissioner (Appeals) of CGST & Central Excise, Mumbai-II)

M/s Hindoostan Mills Ltd **.....Appellant**
Sir Vithaldas Chambers, 16 Bombay Samachar Marg, Mumbai-400001.

VERSUS

Commissioner of CGST And Central Excise-Mumbai Central **.....Respondent**
9th Floor, Piramal Chambers, Jijibhoy Lane, Lalbaug, Parel, Mumbai-400012.

Appearance:

Miss Shraddha Shettigar along with Miss Sakshi Mayekar, Company Employee for the Appellant
Shri P. K. Acharya, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)

FINAL ORDER NO. A/85983 / 2022

Date of Hearing: 27.10.2022
Date of Decision: 27.10.2022

PER : S.K. MOHANTY

Brief facts of the case are that the appellant herein is engaged *interalia,* in the manufacture of excisable goods namely, grey cotton fabrics and grey man-made fabrics of filament yarn and staple yarn, falling under Chapter Heading No. 52,53,54,55 & 58 of the Schedule to the Central Excise Tariff Act, 1985. The appellant availed Cenvat Credit in respect of Central Excise duty paid on inputs and Service Tax on the input services. During the disputed period, the appellant had filed refund application before the jurisdictional Central Excise authorities, claiming refund of Cenvat Credit lying unutilized in the books of account. The reason for filing of the refund application was that the factory of the appellant was closed down and there was no occasion or scope to utilize such accumulated Cenvat Credit for payments of Central Excise duty on the excisable goods manufactured by them. After several round of litigations before the original as well as appellate forum, the refund claim was favorably considered by the Department. The order dated 03.11.2017 passed in this regard by learned Deputy Commissioner of CGST and Central Excise, Mumbai Central had sanctioned refund amount of Rs.35,23,640/- in favor of the appellant. However, instead of crediting the said amount into the appellant's books of accounts, the said order has appropriated such amount against the outstanding Government dues. In this regard, it has been stated that certificate action has already been initiated under Section 142 of the Customs Act, 1962 in terms of the order dated 23.06.2016 passed by Assistant Commissioner, Central Excise, Division GH, Mumbai-I, ordering for recovery of an amount of Rs.51,86,838/- towards the interest liability. The order of appropriation dated 03.11.2017 was appealed against by the appellant before learned Commissioner (Appeals), which was disposed of vide impugned order dated 26.06.2019, in upholding the order passed by the original authority. Feeling aggrieved with the impugned order, the appellant has preferred this appeal before the Tribunal.

2. Ms. Shraddha Shettigar, CFO, authorized company executive appearing for the appellant submitted that recovery of interest

amounting to Rs.51,86,838/- confirmed vide order dated 26.06.2016 has already been settled under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 and as such, there is no outstanding liability against the appellant for recovery out of the refund amount sanctioned by the Department vide order dated 03.11.2017. In this regard, she has submitted the order dated 07.04.2021 passed by this Tribunal in Excise Appeal No. 88122 of 2018, in the case of the appellant itself. She has also submitted the Form No SVLDRS-4 issued by the Department in support of full and final settlement of tax dues under Section 127 of the Finance (No.2) Act, 2019 read with Rule 9 of the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019. Thus, the authorized representative submitted that since there is no outstanding liability against the appellant upon settlement of dispute under the Scheme of 2019, the appellant should be entitled for the refund amount of Rs.35,23,640/- sanctioned vide order dated 03.11.2017.

3. On the other hand, Learned Authorized Representative appearing for the Revenue reiterates the findings recorded in the impugned order.

4. Heard both sides and perused the records.

5. I find that against the outstanding demand of Rs.51,86,838/- confirmed as interest liability, the refund amount sanctioned by the Department was appropriated against such liability. On perusal of the case records and documents submitted by the appellants today at the

time of hearing of appeal, I find that the interest demands has already been settled under the SVLDRS-4, 2019 and consequent upon settlement of dispute, the appeal filed by the appellant before the Tribunal was also dismissed as deemed withdrawal. I have also perused the SVLDRS-4 submitted by the appellant, wherein the department has confirmed that the outstanding liability has already been settled under such scheme. Since there is no liability of making any payments towards the adjudged Government dues as on date, I am of the considered view that there is no question of any appropriation of the sanctioned refund amount against any liability as mentioned in the adjudication order dated 03.11.2017.

6. In view of the foregoing discussions, the appeal filed by the appellant is allowed, with the direction that the appellant should be entitled for grant of refund for an amount of Rs.35,23,640/-.

7. In the result, the appeal filed by the appellant is allowed by setting aside the impugned order.

(Dictated and pronounced in the open court)

(S. K. Mohanty)
Member (Judicial)

Sm/ys