CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

REGIONAL BENCH

Excise Appeal No. 89441 of 2014

(Arising out of Order-in-Original/CCE/SHILLONG NO. 05/2014 dated 29.08.2014 passed by the Commissioner of Central Excise, Shillong)

Mr. Bharat Shetty ....Appellant
Proprietor of M/s. Aditi International,
Plot No. EL-134, Electronic Zone,
TTC Industrial Area, MIDC,
Village Mahape, Navi Mumbai-400 701

VERSUS

........Respondent

Commissioner of CGST And Central Excise, Belapur
1st Floor, CGO Complex,
CBD Belapur,
Navi Mumbai-400 614

APPERANCE:

Shri V. M. Doiphode, Advocate for the Appellant.

Shri Vinod S. Chettiparambil, Assistant Commissioner, Authorised Representative for the Respondent.

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)
HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 85116/2024

Date of Hearing: 17.01.2024
Date of Decision: 27.02.2024

PER: DR. SUVENDU KUMAR PATI

Confirmation of demand of Rs.78,41,905/- against the Assessee with equal penalty and interest under Rule 14 and 15 of the CENVAT Credit Rules, 2004 read with Section 11AA, 11AC & 11AB of the Central Excise Act, 1944 respectively against irregular availment of CENVAT Credit without actual receipt of excisable inputs by the

Commissioner, Shillong as Commissioner, Navi Mumbai is assailed in this appeal by the Assessee/Appellant.

2. Facts of the case, in brief, is that Appellant is an importer and trader of sandalwood oil and essential oils who also had allegedly procured pure African sandalwood oil under 16 invoices having total quantity of 2221 kgs. by train or air transport mode from M/s. J.G. Spices Ltd., Guwahati. The DGCEI, Kolkata Zonal Unit investigated against M/s J.G. Spices Ltd. for evasion of Central Excise duty and observed that Notification No. 32/99-CE dated 08.07.1999 with subsequent amendments was being mis-utilized in taking exemption of additional duty of Excise. Under the said notification the manufacturers were being refunded with the Excise duty paid by them on raw material but investigation by DGCEI confirmed that M/s J.G. Spices Ltd. was not manufacturing any sandalwood oil itself and both inward and outward of alleged inputs and final products were being shown in the papers for availment of exemption Notification No. 32/99-CE and for availment of CENVAT Credit by its buyers located at different places of the country. M/s Aditi International proprietorship firm of Mr. Bharat Shetty is one of such buyers of such sandalwood oil and it had been availing CENVAT Credit against invoices issued by M/s J.G. Spices Ltd. Further, investigation by DGCEI also revealed that Mr. Bharat Shetty was not only the buyer of M/s J.G. Spices Ltd. but also its financer and it was aiding and abating the illegal operation of M/s. J.G. Spices Ltd. with profit sharing basis. On the basis of investigation reports, 16 units including M/s J.G. Spices Ltd. and M/s. Aditi

International were noticed on 25.04.2012 with demands raised for the past five years, matter was adjudicated by the Commissioner, Shillong as common adjudicator being specially appointed by CBEC *vide* its Order No. 8/2012-C and the above noted duty, penalty and interest were confirmed against the present Appellant Mr. Bharat Shetty as properiter of M/s. Aditi International.

3. During course of hearing of the argument learned Counsel for the Appellant submitted that it had produced every detail of its transaction with M/s J.G. Spices Ltd. to the adjudicating authority including copies of transit pass issued by Forest Department Shillong, Railway, Transit receipt etc. but without giving due consideration to those documents evidencing transportation of goods from M/s J.G. Spices Ltd., Meghalaya to Navi Mumbai, such a demand was confirmed by the adjudicating authority on the sole ground that M/s J.G. Spices Ltd. had no capacity to manufacture such huge quantity of product in its existing machinery. In citing Judicial decisions of Hon'ble Jharkhand High Court passed in the case of *Commissioner of Central Excise, East Singhbhum Vs. Tata Motors Ltd.* reported in *2013 (294) E.L.T. 394 (Jhar.)* and another of Hon'ble Punjab and Haryana High Court passed in the case of *Commissioner of Central Excise, Chandigarh Vs. Neepaz Steel Ltd*. reported in *2008 (230) ELT 218 (P & H)*, he further argued that once a buyer received invoices of excisable item and payment has been made in respect of those inputs on the basis of invoices raised, it would suffice the purpose of availment of credit as it would be most unreasonable and unrealistic to expect such

buyer to go and verify the suppliers' detail account and it would be impracticable also for him to go beyond the records maintained by the first stage dealer. Moreover, it would sufficiently meet the purpose if the assessee would show reasonable diligence while dealing with Rule, 9 of the CENVAT Credit Rules, 2004 and, therefore, casting a burden on the assessee would be contrary to the Rule. Citing decision of this Tribunal made at its Kolkata Bench in the case of M/s. New *Modern Technomech Pvt. Ltd. Vs. Commissioner of CGST & CX, Rourkela*, he also argued that it was held in the said decision that it would be unreasonable and unrealistic to expect buyer of inputs to go and verify the supplier and to find out whether actually duty has been paid and it is, therefore, beyond the scope and capacity of the Appellant to verify every detail of the supplier's factory located at Shillong before availing the credits, which in fact was paid by the Appellant and taken in the regular course of business, for which the order passed by the Commissioner is palpably wrong and it is required to be set aside.

4. In response to such submissions, learned AR for the Respondent-Department submitted that taking advantage of the beneficial notification meant for the North Eastern region, the goods were technically imported/taken to Meghalaya to M/s J.G. Spices Ltd. firm whereby additional duty of Excise was returned back to M/s J.G. Spices Ltd. and after those were being shown as sold through issue of invoices, the purchasers were being taking the CENVAT Credits of the duty paid through those invoices but it was an organized crime done by group of people in a planned manner to syphon public money into

their account and such evil design must have to be strongly dealt with. He took us to para 3.4 of the Commissioner's order to substantiate that recovery of E-mail exchange between the Director of M/s J.G. Spices Ltd. Priya Ranjan Dey and the present Appellant Mr. Bharat Shetty clearly indicated that there was profit sharing arrangement between M/s J.G. Spices Ltd. and Mr. Bharat Shetty <u>even to the extent where profit earned by evading Government taxes like CST etc. were discussed</u> and this Mr. Bharat Shetty was one of the founders of the firm called M/s. J.G. Spices Ltd., for which the order passed by the Commissioner needs approval of this Tribunal.

5. We have gone through the case record, relied upon case laws and the order in detail passed by the Commissioner. At the outset, it is to be noted that the eligibility of the credits availed by the Appellant on the basis of invoices issued towards purchase of sandalwood oil is to be determined in this appeal. Receipt of inputs as such by the Appellant and duty paying documents in conformity to Section 9 of the CENVAT Credit Rules are material for the purpose of determination of its eligibility to avail the credits. The inputs were supposed to be sandalwood oil but what was being transported/supplied were actually nothing but "plain water", as noted by learned Commissioner in para 2.4 of his order describing content of search report for the 1475 kg of crude sandalwood oil, which were found in sealed condition and bound in wooden crates with airport security seal intact but when broke open and verified was found to be plain water only. More importantly in the containers that were being carried by Air India Cargo having AWB

numbers were said to be containing sandalwood oil (finished products) did not appear sandalwood oil at all by its appearance and odour, showing those to be of genuine purchases made through import. M/s J.G. Spices Ltd. was availing the benefit of exemption notification. Interestingly enough, during investigation 35 numbers of rubber stamps of Government Officials and Government Offices like Sales Tax Department of Government of Meghalaya, Assam and West Bengal were recovered from the office premises of M/s J.G. Spices Ltd. alongwith blank letter pads, blank invoice books and rubber stamps of some suppliers of raw materials. So raising invoice by itself and sending raw water in sealed container by M/s J.G. Spices Ltd. could be a probability. Now it is to be seen if the same is done with the knowledge from consent and in connivance with present Appellant.

6. Apart from several references in the investigation report concerning Appellant's involvement in the operation, it is required to be seen what was been voluntarily explained by the Appellant in his statement recorded under Section 14 of the Central Excise Act, 1944.

7. From his statement, it can be noticed that sandalwood oil imported by him were of pure variety and there is nothing in trade known as crude sandalwood oil but for the purpose of certain rectification, method of distillation is applied so also in the case of Patchuli Oil. M/s J.G. Spices Ltd. was one of his customer to whom he supplied imported sandalwood oil and Patchuli oils in containers in the same sealed condition without any further processing. Being

confronted with the fact that during search and seizure made by DGCEI of the stock of raw materials and finished group available at M/s J.G. Spices Ltd. premises representative sample were drawn from each container and Directorate of Forensic Science report was called for *vide* letter dated 29.09.2010 and it conformed the material content was nothing but "water" to which the Appellant's reply was that they used to open the container, upon receipt and even Customs Officer do so before clearance but the cap of the drums were only put back without re-sealing. While not denying the findings of Forensic Science Assam report, he stated in his statement that once goods were dispatched from there end, they have no control on it after it reached the destination but the same statement is contradictory to the investigation since, essential oils like sandalwood oil and patchuli oils seized in the premises of M/s. J.G. Spices Ltd. were all in sealed conditions. This being so, we have got no hesitation to come to the conclusion that goods were imported in sealed condition, taken to M/s. J.G. Spices Ltd., Meghalaya and kept therein also in sealed conditions and again returned back to different traders including the Appellant in sealed conditions affixing transit permit, railway freight invoices and in the process additional Excise Duty which was VAT component of State's tax collected by Union and Central Excise duty both were realized at both the points by the supplier and purchasers respectively causing loss to the State exchequer.

8. While admitting that it was providing occasional loans to M/s J.G. Spices Ltd. and diverting of imported consignments to Delhi, brought

in the name of M/s J.G. Spices and collecting the same himself for its customers at Delhi, Appellant firmly denied to have any sharing of profit margin between his proprietorship firm and M/s J.G. Spices Ltd. but on close scrutiny of admitted statements, which needs no further collaboration in view of operation of Section 58 of the Indian Evidence Act, as has been held by several judicial forum including Hon'ble Supreme Court of India in the case of *CCE, Madras Vs. Systems & Components Pvt. Ltd.* reported in *2004 (165) ELT 136 (SC)*, the facts would go to indicate that Appellant himself was the importer and supplier of sandalwood oil who was also sending the same to the main culprit M/s J.G. Spices Ltd. but what was being actually brought and supplied was nothing but "plain water" kept in sealed containers which were taken to Meghalaya to avail the benefit of Notification No. 32/1999-CE and again shown to have sold after processing through invoices, which were apparently fake as official seals and blank invoices were also available at M/s. J.G. Spices Ltd. premises and Appellant's own admission in sufficient indication that imported sandalwood oil and Patchuli oils were of pure variety and needed no further development through any manufacturing process. This being the facts on record and having regard to the fact that the container that is being coming to the Appellant through in land purchases invoices was not containing sandalwood oil, the judgments relied upon by the Learned Counsel for the Appellant that non-payment of duty at the supplier's end would not disentitled the Appellant to avail the credit, would not apply to the present fact of the case. Having said so we are of the firm opinion that the Appellant had not purchased sandalwood oil from M/s J.G. Spices Ltd. through those invoices and the goods transportation documents would not absolve the Appellant from its liability that the inputs against which credits availed were in fact not valid inputs namely sandalwood oil. We, therefore, confirm the order passed by the Commissioner in respect of present Appellant Mr. Bharat Shetty and decline to interfere in it. Hence the order.

THE ORDER

9. The appeal is dismissed and the passed by the Commissioner of Central Excise, Shillong *vide* Order-in-Original/CCE/SHILLONG NO. 05/2014 dated 29.08.2014 in respect of present Appellant Mr. Bharat Shetty proprietor of M/s Aditi International is hereby confirmed.

(Order pronounced in the open court on 27.02.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

(Anil G. Shakkarwar)
Member (Technical)

Prasad