CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 86223 of 2014

(Arising out of Order-in-Original No. BELAPUR/120/Taloja/R-VI dated 30.12.2013 passed by the Commissioner of Central Excise & Customs, Belapur)

VVF (India) Ltd. **Appellant**
(100% Export Oriented Unit),
Plot No. V-41, MIDC,
Taloja, Navi Mumbai.

Vs.

Commissioner of CGST & CE, Belapur **Respondent**
1st Floor, CGO Complex,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Vipin Jain, Advocate, for the Appellant
Shri Xavier P. Mascarenhas, Superintendent, Authorised Representative for the Respondent

CORAM:

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

Date of Hearing: 27.02.2024
Date of Decision: 15.03.2024

FINAL ORDER NO. 85335/2024

PER: ANIL G. SHAKKARWAR

Appellant is engaged in manufacture of various goods including fatty acids, fatty alcohol and soap noodles. Appellant has a 100% EOU status. The goods manufactured are generally exported. Appellant was eligible to procure indigenously manufactured inputs on which central excise duty was paid and was eligible to avail cenvat credit of such duty paid on inputs. Due to exports, there was accumulation of cenvat credit. Under Rule 5 of Cenvat Credit Rules, 2004, appellant claimed refund of accumulated cenvat credit during the months of November and December 2008. Through two orders, appellant was allowed refund of Rs.5,82,63,493/-. Revenue filed appeal against such orders before Commissioner (Appeals). Simultaneously, Revenue also issued show cause notice dated 25.03.2010 for recovery of erroneous refund. The said show cause notice dated 25.03.2010 was decided by Commissioner of Central Excise, Belapur through order dated 29.02.2012 through which earlier allowed refund was ordered to be recovered. In accordance with the said order of learned Commissioner, on 12.10.l2012 appellant made a cash payment of Rs.1,50,28,666/-. In the meantime, appeals filed with learned Commissioner (Appeals) were decided on 15.12.2010. Appellant filed appeals before this Tribunal against the orders passed by Commissioner and Commissioner (Appeals). The said appeals were decided through final order dated 05.12.2019. Through the said final order dated 05.12.2019, this Tribunal had held that the order allowing refund of around Rs.5.82 crores was proper. Against the cash payment of Rs.1,50,28,666/-, appellant availed cenvat credit. That action of the appellant was objected to by Revenue by issue of show cause notice dated 17.07.2013. It was stated in the said show cause notice that the amount of Rs.1,50,28,666/- was pre-deposit ordered by Tribunal and the same was not eligible for availment of cenvat credit. The said show cause notice dated 17.07.2013 was adjudicated through the impugned order dated 30.12.2013 wherein learned Commissioner held that the above stated cash deposit was in the nature of pre-deposit and, therefore, was not eligible for availment of cenvat credit. Therefore, cenvat credit of Rs.1,50,28,666/- was ordered to be recovered under Rule 14 of Cenvat Credit Rules, 2004 and penalty of Rs.10,00,000/- was imposed on the appellant. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. Learned counsel for the appellant has submitted that the said cash deposit was made in accordance with the order passed by Commissioner on 29.02.2012 confirming the demand against erroneous refund. He has submitted that by the time the said deposit was made, the appeal filed before this Tribunal was not been taken up for decision as to whether any pre-deposit was to be ordered and, therefore, the same cannot be held to be pre-deposit ordered by this Tribunal. He has submitted that accumulated cenvat credit was refunded to the appellant and

such refund was considered to be in accordance with law by this Tribunal through its final order dated 05.12.2019 and, therefore, the impugned order-in-original deserves to be set aside.

3. Heard learned authorized representative for Revenue. Learned authorized representative has submitted that there is no provision under Cenvat Credit Rules, 2004 to avail cenvat credit of cash payment. The said Rules provide for availment of cenvat credit of specified duties paid on inputs and input services and, therefore, availment of cenvat credit against cash payment is not in accordance with law.

4. We have carefully gone through the record of the case and submissions made. From the appeal paper book we note that on 12.10.2012, appellant made cash deposit of above stated amount through Form GAR-7 challan and the said amount was credited in Government Accounting Code 0038 which is for central excise duties. Through a letter dated 12.10.2012, appellant has clearly stated the reference of order-in-original passed by learned Commissioner on 29.02.2012 confirming the demand of erroneous refund and stated that the Commissioner had ordered recovery of refund of Rs.5,82,63,493/- which was granted to the appellant under Rule 5 of Cenvat Credit Rules, 2004 and a refund of Rs.1,50,28,666/- was attributable to inputs used for manufacture of DFA C18-C22 and though the appeal was preferred before the Tribunal, they were remitting the said amount through GAR-7 challan. We also note that the said order of Commissioner, dated 29.02.2012 was under challenge before this Tribunal and a hearing on stay application filed by the appellant took place on 23.10.2012. Before August 2014, the provisions of Section 35F of Central Excise Act were that an aggrieved assesse filing appeal before this Tribunal was required to make full payment of the adjudged dues and then prefer an appeal. There was a procedure in practice that the appellant used to file application for stay of the order appealed against and hearing used to take place on such application. In appellant’s case also, such hearing took place and the last sentence in the miscellaneous order deciding such application is that the stay petition is allowed. We also note that the stay petition was

heard on 23.10.2012 and the appellant had made cash deposit on 12.10.2012 much before the hearing of stay application. We, therefore, hold that the present amount which is dealt with by the impugned order does not represent pre-deposit under Section 35F of Central Excise Act, 1944. The present amount represents recovery of such dues which were confirmed by Commissioner of Central Excise, Belapur through his order dated 29.02.2012. We also note that the said order dated 29.02.2012 was set aside by this Tribunal through final order No. A/87442-87444/2019 dated 05.12.2019.

5. At this stage, we note that the amount of around Rs.1.5 crores was cash deposit made by the appellant. We also note that the appellant was not eligible to take cenvat credit of the said cash deposit. We also note that as on today there is no order in force to keep the said amount with exchequer and we also note that cenvat credit of the said amount is not eligible. We also note that during the relevant period, for debiting central excise duty, the law had provided that the assesse maintained an Account Current which was popularly known as PLA and procedure to take credit in the said PLA was to pay cash through GAR-7 challan. We also note that one of the prayers in this appeal is to pass any orders as deemed fit in the circumstances. Therefore, we resort to Order 7 Rule 7 of Code of Civil Procedure, 1908 which provides as follows:-

*"7. **Relief to be specifically stated**.- Every plaint shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the court may think just to the same extend as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."*

We also reproduce Rule 41 of CESTAT (Procedure) Rules, 1982, as follows:-

*"**RULE 41. Orders and directions in certain cases**. – The Tribunal may make such orders or give such directions as may*

be necessary or expedient to give effect or in relation to its orders or to prevent abuse of its process or to secure the ends of justice."

It can be seen that the Tribunal is empowered to make such orders that may be necessary to secure ends of justice. By resorting to the said provisions of law, we order as follows:-

ORDER

i) We set aside the impugned order-in-original.

ii) We also disallow cenvat credit of Rs.1,50,28,666/-.

iii) Since the amount of Rs.1,50,28,266/- was paid by the appellant in cash with the exchequer, we allow the appellant to take credit of the said amount in their account current maintained, which is also called PLA.

6. In above terms, we dispose of this appeal.

(Order pronounced in the open court on 15.03.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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