

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

Excise Appeal No. 89353 of 2013

(Arising out of Order-in-Original No. 20/NG/COMMR/Th-II/2013 dated 31.07.2013 passed by the Commissioner of Central Excise, Thane-II)

M/s. Aarti Industries Ltd.

E-50, MIDC, Tarapur,
Boisar, Dist. Thane

Appellant

Vs.

Commissioner of Central Excise, Thane-II Respondent

3rd Floor, Navprabhat Chambers, Ranade Road,
Dadar (W), Mumbai 400 028.

Appearance:

Shri Prasannan S. Namboodiri, Advocate, for the Appellant

Shri Rajiv Ranjan, Assistant Commissioner, 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: 01.03.2024

Date of Decision: 16.04.2024

FINAL ORDER NO. 85410/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant is manufacturer of bulk drugs falling under Chapter 29 of First Schedule to Central Excise Tariff Act, 1985. Appellant availed facility of cenvat credit and paid duty on the final products. Majority of the final products were exported under claim of rebate. During the month of October 2011 for the period from April 2010 to March 2011, the audit team conducted the audit and submitted its report. On the basis of the said audit report, appellant was issued with a show cause notice dated 06.03.2013 for the period from 2008-09 to 2011-12 through which cenvat credit amounting to Rs.66,29,230/- was proposed to be recovered under Rule 14 of Cenvat Credit Rules, 2004 read with proviso to sub-section (1) of Section 11A of Central Excise Act, 1944 which provides for issue of show cause notice for demanding of duty under extended period of limitation. It was

contended in the said show cause notice that the appellant was paying central excise duty and was also exporting the goods under claim of rebate. Appellant was availing the benefit of Notification No.02/2008-CE dated 01.03.2008 and various other notifications amending the said Notification dated 01.03.2008 and was paying central excise duty. It was also stated that during the financial year 2010-11, appellant paid central excise duty of around Rs.10 lakhs on goods cleared for home consumption and paid around central excise duty of Rs.30 lakhs on goods exported under claim of rebate. It was contended by Revenue in the said show cause notice that the appellant was eligible for clearing the goods at nil rate of duty at serial No. 47A of Notification No.04/2006-CE dated 01.03.2006, but the appellant deliberately paid the duty. It was also contended that, as provided under sub-section (1A) of Section 5A of Central Excise Act, it was mandatory for the appellant to have availed the benefit under serial No. 47A of Notification No.04/2006 and as a result, appellant was not eligible to avail cenvat credit of Rs.66,29,230/- availed by the appellant during the period from 2008-09 to 2011-12. Therefore, through the said show cause notice, cenvat credit of Rs.66,29,230/- was proposed to be demanded and recovered. There were also other proposals in the show cause notice. Appellant contested the show cause notice stating that they have never availed the benefit of serial No. 47A of Notification No.04/2006-CE since they were not eligible for the same as they have rightly paid central excise duty. The said show cause notice was adjudicated through impugned order-in-original dated 31.07.2013 through which demand of erroneous cenvat credit of Rs.66,29,230/- was ordered to be recovered and equal penalty was imposed under Rule 15 of Cenvat Credit Rules, 2004. 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 bulk drugs manufactured by the appellant are conforming to the standard of pharmacopeia as can be seen from Drug Licence dated 02.02.2010 issued to the appellant by Department of Food and Drugs Administration as the goods manufactured by the

appellant are not meant for use as such, but can only be used as ingredient for manufacture of medicines and bulk drugs are not covered under serial No. 47A of Notification No.04/2006-CE and, therefore, the question of applicability of serial No. 47A of the said notification to the goods manufactured by the appellant does not arise. He has further submitted that Revenue has unilaterally decided that the appellant was not eligible to avail the benefit of Notification No.02/2008-CE dated 01.03.2008 and unilaterally decided that the goods manufactured by the appellant should have attracted nil rate of duty and with this presumption they have raised the demand for recovery of cenvat credit. He has further submitted that after payment of central excise duty and on export of goods, appellant was allowed a rebate of Rs.51,05,099/- for the period from 2008-09 to 2011-12 during the relevant period and through show cause notice dated 31.01.2004 after the issue of the present show cause notice, recovery was proposed of already allowed rebate on similar goods of the appellant not being eligible to pay central excise duty. The said proceedings for recovery of rebate were decided in favour of the appellant by learned Commissioner (Appeals) by his order-in-appeal No. SK/150/TH-II/2015 and against the said order-in-appeal, Revenue has not preferred any appeal. Learned counsel has submitted that the conclusion of the said proceedings indicate that payment of central excise duty on the goods manufactured by the appellant was in accordance with law. He has further submitted that Revenue has not brought any evidence on record nor given any reasoning as to why the goods manufactured by the appellant were covered by serial No. 47A of Notification No.04/2006-CE dated 01.03.2006.

3. Heard the learned AR for Revenue. Learned AR has reiterated the findings of the original authority.

4. We have carefully gone through the record of the case and submissions. We note that in the present proceedings, Revenue has sought to disallow entire cenvat credit availed by the appellant on the inputs and input services utilized in the manufacture of goods on which central excise duty was paid and ER-1 returns were filed. We also find that Revenue has

unilaterally come to a conclusion without assigning any justification through the said show cause notice as to how the appellant was required to clear the goods under full exemption under serial No. 47A of Notification No. 04/2006-CE dated 01.03.2006. As per the provisions of law, Revenue should have issued the appellant with a show cause notice calling upon them to show cause as to why they should not clear the goods at nil rate of duty applying the provisions at serial No. 47A *ibid*. Such proceedings would have given complete opportunity to the appellant to explain as to why the said serial number of the said notification was not applicable to the appellant. Without giving any opportunity to the appellant to present their defence on the contention of Revenue that the appellant should have cleared the goods availing full exemption, Revenue has unilaterally decided that the said serial number of the said notification was applicable to the appellant. For this reason alone, these present proceedings are not sustainable.

5. We, therefore, set aside the impugned order and allow the appeal.

(Order pronounced in the open court on 16.04.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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