CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI

WEST ZONAL BENCH, MUMBAI

Excise Appeal No. 86759 of 2021

(Arising out of Order-in-Appeal No. NSK-EXCUS-000-APPL-47-2021-22 dated 30.06.2021 passed by the Commissioner of CGST & Central Excise (Appeals). Nashik)

M/s Marico Limited ....Appellant
E-10, MIDC Area, Ajanta Road,
Paldhi, Jalgaon, Maharashtra – 425 103

VERSUS

Commissioner of CGST & ....Respondent
Central Excise, Nashik
Kendriya Rajaswa Bhawan,
Gadkari Chowk, Nashik,
Maharashtra – 422 002,

APPERANCE:

Shri Abhishekh Deodhar, Advocate for the Appellant
Shri Rajiv Ranjan, Assistant Commissioner, Authorised Representative for the Respondent

CORAM:

HON'BLE DR. SUVENDU KUMAR PATI, MEMBER (JUDICIAL)

FINAL ORDER NO. 85802/2024

Date of Hearing: 18.07.2024
Date of Decision: 26.08.2024

Denial of CENVAT Credit to previous invoices, after period of limitation of six months for such availment of credit was introduced w.e.f. 01.09.2014, by the Adjudicating Authority that attained finality by way of confirmation of the said order by the Commissioner (Appeals) *vide* his above referred order is assailed in this appeal.

2. In a nut shell, fact of the case would go to reveal that Appellants is a manufacturer of "Parachute Advanced" brand hair oil who had availed CENVAT Credit in respect of two invoices raised in June/July, 2014. Notification No. 21/2014-CE (NT) introduced proviso to Rule 4 of the CENVAT Credit Rules, 2004 w.e.f. 01/09/2014 putting a time limit of six months, from the date of invoice, to avail such credit after which it was directed to be not taken. Subsequent Notification No. 06/2015-CE (NT) dated 01.03.2015 extended the same time period to one year. Appellant sought for availment of CENVAT Credit in January, 2015 in respect of those 2 invoices issued in June/July, 2014 and the same was objected by Department as it was in violation of said Notification No. 21/2014-CE (NT). Show-cause notice was issued to the Appellant, adjudication process was initiated and concluded against it and Appellant's unsuccessful attempt before the Commissioner (Appeals) has brought the dispute to this forum.

3. During course of hearing of the appeal, in citing plethora of decisions on the issue, learned Counsel for the Appellant submitted that issue is no more *res integra* in view of precedent decisions on it that the said notification would not be applicable to invoices raised prior to the date of implementation of the said notification i.e. prior to 01.09.2014. He further submitted that Section 38A of the Central Excise Act has clearly stipulated that notification affecting right, privilege, obligation or liability … can't stand if the same is contrary to the right, privilege etc. granted under the Act prior to issuance of such notification. In respect of precedent decision, he placed his

reliance on the following case laws and makes a fervent plea to set aside the order of the Commissioner (Appeals).

4. In response to such submission, learned Authorised Representative for the Respondent-Department argued in favour of the reasoning and rationality of the order passed by the Commissioner (Appeals) and stated that even with introduction of said notification, Appellant had enough time to avail the said credits within six months and it had not done so, for which interference in the order passed by the Commissioner (Appeals) is uncalled for.

5. I have gone through the case record and precedent decision on the issue. Admittedly for two invoices issued on 28.06.2014 and 01.07.2014 credit of ₹13,59,600/- each was taken by the Appellant, as revealed from the show-cause notice. These invoices would go to show that by the time Notification No. 21/2014-CE (NT) was brought into force on 01.09.2014, the said period of six months was not over but because of the fact that during those period no specific time limit was prescribed to avail the credit, denial of the same credit for the invoice issued prior to the effective date would naturally be in violation of the statutory provision contained in Section 38A of the Central Excise Act, 1944.

6. To bring more clarity to the issue the same can be explained by placing an example that instead of invoice being issued on 01.07.2014, had it been issued on 07.01.2014, period of six months would have expired by the time Notification No. 21/2014-CE (NT) was brought into force on 01.09.2014. It is apparently for this

reason that consistent decision is passed by this Tribunal that the same Notification No. 21/2014-CE (NT) is applicable to the invoices issued post Notification No. 21/2014-CE (NT). Even when the issue is nearly settled, what can be said to be in the greater interest of justice is that the date of invocation of the provision, in respect of invoices issued prior to 01.09.2014, should be considered as deemed date of invoice in respect of all previous documents/invoices available with the manufacturing and supplying agency to avail such credit as has been held by me in the previous judgment reported in *2018 (9) TMI 19 (CESTAT - Mumbai)* in the case of *Hariprabha Chemicals P. Ltd. Vs. CCGST, Kolhapur*. I, therefore, reiterate my finding on this issue also by saying that Appellant having availed credit on these two invoices on 31.01.2015, since within six months of 01.09.2014, is entitled to the credits availed by it. Hence the order.

THE ORDER

7. The appeal be and same is allowed and the order passed by the Commissioner of CGST & Central Excise (Appeals), Nashik *vide* Order-in-Appeal No. NSK-EXCUS-000-APPL-47-2021-22 dated 30.06.2021 is hereby set aside with consequential relief, if any not availed during CENVAT Credit transaction to Electronic Credit Ledger.

(Order pronounced in the open court on 26.08.2024)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

Prasad