CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 87638 of 2015

(Arising out of Order-in-Appeal No. CD/597/BEL/2015 dated 01.07.2015 passed by the Commissioner of Central Excise (Appeals), Mumbai Zone-II)

The Standard Chemicals Co. Pvt. Ltd. **.... Appellant**
Bombay Poona Road, Kharegaon,
Kalwa, Thane- 400 605.

Versus

Commissioner of CGST and Central Excise, Belapur **.... Respondent**
1st Floor, C.G.O. Complex, CBD Belapur,
Navi Mumbai- 400 614.

APPEARANCE:

Shri Kiran Chavan, Advocate for the Appellant

Shri Rajiv Ranjan, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. A/86241/2024

Date of Hearing: 21.06.2024
Date of Decision: 21.06.2024

Per: S.K. MOHANTY

Heard both sides and perused the case records.

2. Brief facts of the case are that the appellants are engaged in the manufacture of 'Sulphur Powder', falling under Chapter Heading 2503 of the Schedule to the Central Excise Tariff Act, 1985. For manufacture of the said goods, the appellants procure the raw material i.e., Crude Sulphur in granular or powder form, on payment of appropriate Central Excise duty, claimed by the suppliers in their invoices. The process undertaken in the

factory of the appellants for manufacture of the said final product are that Crude Sulphur received in granule form are taken into the pulverizing machine to convert the same into powder form; the said powder is then put into the sieving/shifter machine for taking out the fine powder of required fineness; whenever, the appellants receive Crude Sulphur in powder form, then the same are directly taken into sieving/shifter machine for sieving. After completion of the process of sieving, the powered granules are packed into 25/50 Kgs. HDPE bags and sold in the market. On removal of powered granules from the factory, the appellant duly discharges the Central Excise duty liability. They also avail Cenvat credit of Central Excise duty paid on the inputs, used in or in relation to such process of manufacture. For ascertaining the process of manufacture/ generation of Sulphur powder, the Central Excise department had investigated into the matter and observed that the process of obtaining the fine quality Sulphur powder by mere pulverizing and sieving of granules of Crude Sulphur into Sulphur Powder of required fineness and packing into 50 kg. packs, does not amount to manufacture, as no new and different product having distinctive name, character or use is emerging and that none of the Section/Chapter notes of Chapter 25 specifies that the said process is amounting to manufacture. On the basis of such understanding, the department had initiated show cause proceedings against the appellants, seeking for recovery of irregularly availed Cenvat credit along with interest and for imposition of penalty. The Show Cause Notice dated 05.12.2011 issued in this regard was culminated into the Order-in-Original dated 30.10.2013, wherein the learned Additional Commissioner of Central Excise, Belapur had held that the process of pulverizing, sieving of Sulphur would not amounting to manufacture; confirmed Cenvat demand of Rs.5,31,535/- along with interest under Rule 14 of the Cenvat Credit Rules, 2004 and also imposed penalty of Rs.25,000/- under sub-rule (1) of Rule 15 *ibid* on the appellants. However, the adjudicating authority had dropped the proceedings initiated against the appellants under Section 11D of the Central Excise Act, 1944. The adjudication order dated 30.10.2013, insofar as it has confirmed the adjudged demands was appealed against by the appellants before the learned Commissioner of Central Excise (Appeals), Mumbai Zone-II. The said appeal was disposed of by the learned Commissioner (Appeals) vide the Order-in-Appeal No. CD/597/BEL/2015 dated 01.07.2015 (for short, referred to as 'the impugned order'), in rejecting the appeal filed by the appellants. Feeling aggrieved with the impugned order, the appellants have preferred this appeal before the Tribunal.

3. Section 6 of the Central Excise Act, 1944 mandates that any person, who is engaged in manufacture or any process of manufacture of any specified goods included in the First Schedule to the Central Excise Tariff Act, 1985, then he shall get himself registered with the proper officer, in the manner prescribed in Rule 9 of the Central Excise Rules, 2002. In the present case, it is an admitted fact on record that the appellants were recognized as a manufacturer of excisable goods in terms of Section 6 *ibid* and accordingly, the jurisdictional Central Excise authorities have issued the registration certificate to them for transacting the manufacturing business. The appellants had also cleared the manufactured goods outside the factory premises on payment of appropriate Central Excise duty. Since, the inputs required for use in, or in relation to, manufacture of the final product were purchased by them on payment of Central Excise duty; they are permitted under the Cenvat statute to take credit of such duty in their books of accounts, for utilization towards clearance of the manufactured goods. In this context, Rule 3 (1) of the Cenvat Credit Rules, 2004 is the enabling provision, which entitles a manufacturer of final product to take Cenvat credit of various duties and taxes itemized therein, which were paid on any inputs received in the factory of manufacture of the final product. Taking of Cenvat credit by a manufacturer is permitted under sub-rule (4) of Rule 3 *ibid* for utilization towards payment of duty of excise on the final product removed from the factory. It is not the case of Revenue that taking or utilization of Cenvat credit by the appellants are contrary to the Cenvat statute. Thus, in our considered view, the provisions of Rule 14 *ibid* read with Section 11A *ibid* cannot be invoked for

confirmation of the adjudged demands on the appellants. Further, we find from the adjudication order at paragraph 20 that the original authority had observed that the assessee had not collected any excess duty and that whatever duty collected from their customers, were paid into the credit of the Central Government account. From such observations made by the adjudicating authority and in view of the fact that the appellants were recognized as a manufacturer of excisable goods, for which the registration certificate was issued on their behalf, it cannot be said that the process of pulverizing, sieving of Sulphur undertaken by them in their registered factory, should not be considered as a manufacturing activity.

4. We find that the issue arising out of the present dispute is no more *res integra*, in view of the Final Order Nos. A/86721/2019 dated 23.09.2019 and A/85564/2024 dated 04.06.2024 passed by this Tribunal, in the case of the appellants, on the identical set of facts, for the earlier periods. The relevant paragraphs recorded in the order dated 04.06.2024 (supra) are extracted herein below:

> *"3. It is an admitted fact on record that the goods manufactured by the appellants were cleared on payment of central excise duty and such duty paid by the appellant was accepted by the Revenue as duty of excise and retained with the Government exchequer. Since the central excise duty paid on final product manufactured by the appellant was accepted, denial of CENVAT Credit taken on the inputs used in or in relation to manufacture of such final products is not proper and justified inasmuch as Rule 3 of the CENVAT Credit Rules, 2004 entitle the manufacturer to take CENVAT Credit on the inputs with the condition that such inputs shall be used for manufacture of the final product to be cleared on payment of central excise duty.*
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> *4. We find that the issue arising out of the present dispute is no more res integra in view of the Final Order No. A/86721/2019 dated 23.09.2019 passed by the Tribunal in the appellant's own case. For the earlier period, the denial of CENVAT Credit benefit on the identical set of facts was set aside by the Tribunal holding that taking of CENVAT Credit on the inputs is in conformity with the CENVAT statute."*

5. In view of the foregoing discussions and analysis, we do not find any merits in the impugned order, insofar as it has upheld confirmation of the adjudged demands on the appellants. Therefore, the impugned order is set aside and the appeal is allowed in favour of the appellants.

(Operative portion of order pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(M.M. Parthiban)
Member (Technical)

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