CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

WEST ZONAL BENCH

EXCISE APPEAL NO: 86343 OF 2017

[Arising out of Order-in-Original No: Belapur/39/Bel-I/RIII/Talreja/COMMR/ SFA/2016-17 dated 08th March 2017 passed by the Commissioner of Central Excise, Belapur.]

Talreja Textile Industries Ltd
Plot no. D-69/71 TTC Indl Area, Turbhe
Navi Mumbai … ***Appellant***

versus

Commissioner of Central Excise
Belapur
1st Floor, CGO Complex CBD Belapur
Navi Mumbai - 400614 ***…Respondent***

WITH

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Manish Rupani
Talreja Textile Industries Ltd
Plot no. D-69/71 TTC Indl Area, Turbhe
Navi Mumbai … ***Appellant***

versus

Commissioner of Central Excise
Belapur
1st Floor, CGO Complex CBD Belapur
Navi Mumbai - 400614 ***…Respondent***

APPEARANCE:

Shri Prakash Shah and Shri Ananta Khandait, Advocates for the appellants

Shri Mahesh Patil, Additional Commissioner (AR) for the respondent

CORAM:

HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)
HON'BLE MR AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER NO: 86658-86659/2024

DATE OF HEARING:	30/04/2024
DATE OF DECISION:	29/10/2024

PER: C J MATHEW

The limited issue in this appeal of M/s Talreja Textile Industries Ltd, against order[1] of Commissioner of Central Excise, fastening duty liability of ₹ 19,79,86,930/- for November 2011 to August 2016 under section 11A of Central Excise Act, 1944, along with applicable interest under section 11AA of Central Excise Act, 1944, and imposing penalty of like amount under rule 25 of Central Excise Rules, 2002 besides imposing penalty of ₹ 2,00,00,000 on Shri Manish Rupani under Rule 26 of Central Excise Rules, 2002, is the chargeability to duty, by denial of benefit of notification no. 30/2004-CE dated 9th July 2004 on the ground that the condition of non-availment of CENVAT credit therein had been breached in procurement of 'granules', 'ANTISTAT 008' and 'EUTEX OB' during the disputed period.

2. The case of the appellant is that the credit of ₹ 3,10,020/- had been reversed and the disproportionate consequences are contrary to

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[1] [order-in-original no: Belapur/39/Bel-I/RIII/Talreja/COMMR/ SFA/2016-17 dated 08th March 2017]

the decision of the Hon'ble High Court of Allahabad in *Hello Minerals Water (P) Ltd v. Union of India [2004 (7) TMI 98 – ALLAHABAD HIGH COURT]*.

3. The appellant manufactures two products, *viz.,* '100% cotton fusible interlinings' and 'mifrofine (microdot) powder' and it is from the latter that the former acquires final shape. Though the latter is not liable to duty, as captively consumed input, the appellant, in terms of notification no. 30/2004-CE dated 9th July 2004 had cleared the final product without payment of duty and, instead, discharged duty liability on the intermediate product. It was alleged that the appellant had not disclosed the discontinuation of the duty liability on the finished product in their returns and had, instead, also taken credit of the duty paid on several of the goods utilized in the manufacturing process. It was on this issue of violation of the conditions in the said notification that the premises of the appellant was searched and the entire stock of finished product valued at ₹ 2,83,87,455 came to be seized that, in the impugned order, was permitted to be redeemed on payment of fine of ₹ 15,00,000.

4. Learned Counsel for the appellants submitted that all the allegations of non-reporting are of technical nature and that they had, admittedly, cleared their entire production without payment of duty in accordance with entitlement to the impugned notification. It was also

submitted that credit of ₹ 1,35,42,984 had been availed on the goods and services procured by them and that they had not taken credit of ₹ 78,52,287 on chemicals and ₹ 7,40,649 used directly in manufacture of finished products. It was further submitted that the total credit incolved in the three items in dispute was ₹ 3,10,020 which had, since, been reversed.

5. We have heard Learned Authorised Representative.

6. It is not in dispute that the appellant had cleared all final product by availing exemption in the impugned notification and that such exemption is not available in the event that CENVAT credit had been taken on the inputs used in the manufacture of the finished products. As duty liability had been discharged on the intermediate product, the entitlement to avail credit thereof could not be denied and, to the extent that such credit was utilized for clearance of the intermediate product, there is no provision in law which enables recovery of duty thereof.

7. The denial of exemption notification, and consequent recovery of duty, is premised on credit having been taken even though the goods involved were allegedly used in the manufacture of finished products that were exempted. It is the claim of the appellant that these were actually used in the manufacture of intermediate product that was duty paid and hence eligible to be availed as credit. Without

going into the technicalities and on the averment that the disputed credit had been reversed, in conjunction with the decision of the Hon'ble High Court of Allahabad in *re Hello Minerals Water (P) Ltd* holding that

> *'17. The question as to whether manufacturer can be treated as not having taken credit on the inputs used in the manufacture of final product, even though it was originally taken but subsequently reversed, has been decided by a five Member Bench of the Tribunal in the case of Franco Italian Company Pvt. v. CCE, 2000 (120) ELT 792. The aforesaid five members Bench of the Tribunal after taking into account the ratio laid down by the Supreme Court in the case of Chandrapur Magnet Wire (P) Ltd. v. CC, Nagpur, 1996 (81) ELT 3 has held as under:-*
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> > *"6. Drawing similar analogy we consider that subject to the reversal of Modvat credit taken with regard to the inputs which were utilised in the manufacture of duty free goods, the manufacturer could avail of the Modvat credit as well as full duty exemption under applicable small scale exemption notification with regard to some specified goods. Reference is answered accordingly.*
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> > *7. As a result the impugned order-in-appeal dated 28-1-1999 passed by the Central Excise is set aside and the appeal of Franco Italian Company (supra) is allowed subject to the conditions that Modvat credit taken of the duty paid on the inputs which were utilised in the manufacture of duty free goods, is reversed."*
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> *18. In view of the above decision we are of the opinion that reversal of Modvat credit amounts to non-taking of credit on the inputs. Hence the benefit has to be given of the notification granting exemption/rate of duty on the final product since the reversal of the credit on the input was done at the Tribunal's stage.*

19. The Tribunal while passing the impugned order dated 1-10-2003 [2004 (163) ELT 55 (Tri. - Del.)] has not referred to the larger Bench decision of the Tribunal and other binding decisions. In Chandrapur Magnet Wire Limited v. Collector Central Excise, 1996 (81) ELT 3 the Supreme Court has held:-

> *"If debit entry is permissible to be made, the credit entry for duties paid on the inputs utilised in manufacture of final exempted product will stand deleted in the account of the assessee. In such a situation it cannot be said that the assessee has taken credit for the duty paid on the inputs utilised in the manufacture of final exempted product under Rule 57-A. In other words the claim of exemption of duty on the disputed goods cannot be denied on the plea that the assessee has taken credit of duty paid on the inputs used in manufacture of these goods."*

20. The Tribunal while passing the impugned order dated 1-10-2003 instead of following the principles of law and the ratio of the decision of the Supreme Court in Chandrapur Magnet Wires Ltd. (supra) and also the decision of the larger five Members Bench of the Tribunal in the case of Franco Italian Company (P) Limited (supra) and other larger bench decision in the case of ICON Pharma and Surgical (P) Ltd. - 2000 (40) RLT 918 has held that reversal on inputs credit should have been done before removal of the bottles. In our opinion the Tribunal has completely misunderstood the decision in the case of Chandrapur Magnet Wires Ltd. (supra) in which the Supreme Court has quoted the Circular issued by the Ministry of Finance, being Circular No. 22/8/86, dated 10-4-1986. In Para 5 of the said Circular it was mentioned that the duty paid in the inputs used should be debited, before removal of such exempted final products. Since the Circular in that case required reversal of the credit before removal of the final product, hence the Supreme Court interpreting the said circular has mentioned that they see no reason why the assessee cannot make debit entry before removal of exempted final products.

21. In the present case for the purposes of claiming the benefit of the Notification No. 15/94-C.E., dated 1-3-1994 neither any circular has been issued nor the said circular of 1986 has been made applicable in the notification, which has been issued in 1994.

22. Hence in our opinion the Tribunal was not justified in taking a view that reversal of the credit having been made by the petitioner after removal of the final products the petitioner was not entitled to the benefit of Notification No. 15/94-C.E., dated 1-3-1994.

23. This view of the Tribunal is in our opinion patently erroneous and contrary to the decision of the five Member Larger Bench of the Tribunal as well as three member bench of the Tribunal, and is also contrary to the ratio of the decision of the Supreme Court in the case of Chandrapur Magnet Wire (supra).

24. In fact the decision of the five Member Larger Bench of the Tribunal in Franco Italian Company (supra) was followed by three Member Bench of the Appellate Tribunal in the case of ICON Pharma and Surgical (P) Ltd., 2000 (40) RLT 918.

25. The Tribunal again in a three Member Bench decision in the case of Tube Investment of India, Final Order No. 795/2002, wherein the specific issue was whether the reversal of credit subsequent to removal of goods, was fetal to the extension of benefits of the notification considered the matter at length. The majority decision upheld the argument of the assessee therein and held that reversal of credit subsequent to the clearance of exempted product is in line with the ratio of the Supreme Court judgment laid down in Chandrapur Magnet Wires Co. (supra).

26. Thus all the Division Benches of the Tribunal have been following the larger Bench decision and have taken a consistent *view that reversal of the credit can be made even subsequent to the clearance of the final products. The impugned order dated 1-10-2003 appears to be the only order which is contrary to the consistent view taken so far.*

27. In another case of M/s. High Line Pen v. CCE Final Order No. 359/2003-NBA, dated 24-7-2003 [2003 (158) ELT 168 (Tri.)] the appellate Tribunal again took a view that reversal of credit should be done for availing the benefits of the notification and the time of reversal was not material.

28. The Tribunal in the case of Kitply Industries Limited Eastern Bench at Calcutta, 2001 (130) ELT 236 has again held that reversal of credit would amount to no credit being taken. Hence the assessee was entitled to the benefit of notification. The Appellate Tribunal followed the decision in the case of Chandrapur Magnet (supra). The Appellate Tribunal Southern Bench in the case of Bharat Earth Limited v. CCE, Bangalore, 2001 (136) ELT 225 again applying the ratio of the Supreme Court judgment in the case of Chandrapur Magnet Wires Company (supra) held that reversal of credit was sufficient for availing the benefits of the notification. In fact the Tribunal has directed the assessee therein to reverse the credit. In other words, the credit was directed to be reversed at the Tribunal stage.

29. The aforesaid decision of the Tribunal has followed the ratio of the decision of the Supreme Court in the case of Chandrapur Magnet Wires (supra).

30. In these circumstances the order of the Tribunal dated 1-10-2003 in so far as it relates to denial of the benefit of Notification No. 15/1994-CE is liable to be, and is hereby, set aside. The petitioner is thus entitled to the benefit of the said Notification No. 15/1994-CE, dated 1-3-2004 and reversal of

> *Modvat credit on the inputs namely PVC granules used in the manufacture of PVC/PP bottles, which have been admittedly reversed by the petitioner, even though after clearance of the final product.'*

the continuation of the detriment to the appellants does not sustain.

8. Accordingly, the impugned order is set aside and the appeals are allowed.

(Order pronounced in the open court on 29/10/2024)

(AJAY SHARMA)
Member (Judicial)

(C J MATHEW)
Member (Technical)

**/as*