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

Excise Appeal No. 89670 of 2013

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-095-13-14 dated 11.09.2013 passed by the Commissioner of Central Excise (Appeals), Pune)

Vignahar SSK Ltd. **Appellant**
Junnar/Ambegaon,
At: Nivruttinagar (Dhalewadi),
Post: Shiroli Bk., Tal. Junnar

Vs.

Commissioner of CE & ST, Pune-I **Respondent**
ICE House, 41-A, Sassoon Road,
Opp. Wadia College, Pune 411 001.

Appearance:

Shri Ramachandran Mattiyil, Advocate, for the Appellant
Shri P.K. Acharya, Superintendent, Authorised Representative for Respondent

CORAM:

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

Date of Hearing: 07.10.2024
Date of Decision: 05.11.2024

FINAL ORDER NO. 86823/2024

PER: ANIL G. SHAKKARWAR

Brief facts of the case are that the appellant was manufacturer of cane sugar falling under Chapter 17 of First Schedule to Central Excise Tariff Act, 1985. During the period from 01.03.2005 to 12.05.2005 appellant cleared sugar manufactured by them by paying appropriate central excise duty. On 21.01.2006 officers representing Department of Revenue visited the factory and informed the appellant that additional duty per quintal of sugar had increased to Rs.37/- from Rs.21/- paid by the appellant for the period from 01.03.2005 to 12.05.2005 and required the appellant to pay differential duty @ Rs.16/- per quintal aggregating to Rs.5,48,144/-. Appellant complied with the oral directions of Revenue and debited Rs.5,48,144/- vide entry No.5 dated 21.01.2006 in the cenvat account maintained by them and separately paid interest through PLA. On 31.05.2007 they informed the jurisdictional Assistant Commissioner that there was no increase of duty by Rs.16/- per quintal and, therefore, the credit of Rs.5,48,144/- debited by them on 21.01.2006 was taken as credit in their cenvat account. This was objected to by Revenue and the appellant was issued with a show cause notice dated 25.03.2008 calling upon to show cause as to why the amount of Rs.5,48,144/- taken as credit by the appellant should not be recovered from them under Section 11A of Central Excise Act, 1944 read with Rule 14 of Cenvat Credit Rules, 2004. On contest, the said show cause notice was adjudicated through order-in-original dated 31.12.2012. The original authority held that the said cenvat credit was inadmissible and ordered for recovery of the same. He also imposed penalty. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) which was decided through the impugned order-in-appeal wherein learned Commissioner (Appeals) has held that the appellant should have filed application under Section 11B of Central Excise Act, 1944 for refund of debited cenvat credit. 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 amount was debited under the directions of the officers of Revenue and subsequently the debited amount was not adjudicated upon and confirmed as duty nor was it appropriated by the competent authority towards revenue. In fact the cenvat credit debited was in addition to appropriate duty paid and the said debit was not assessed through any process of assessment including self-assessment. He has relied on the ruling by Hon'ble Rajasthan High Court in the case of Union of India vs. J.K. Laxmi Cement Ltd. reported at 2018 (8) GSTL 231 (Raj.) and submitted that in the said ruling, Hon'ble High Court has held that an amount debited in cenvat account which was in excess of the appropriate payment of duty can be taken credit of by the manufacturer on his own accord.

3. Heard the learned AR who has relied on the following decisions of this Tribunal:-

i) Garden Silk Mills Ltd. vs. Commissioner of Central Excise & ST, Surat reported at 2017 (350) ELT 303 (Tri.-Ahmd.).

ii) BDH Industries Ltd. vs. Commissioner of Central Excise, Mumbai-I reported at 2008 (229) ELT 364 (Tri.-LB).

iii) Mahavir Vanaspati Company vs. Commissioner of Central Excise, Ludhiana reported at 2009 (239) ELT 91 (Tri.-Del.).

iv) Kuma Stainless Tube Ltd. vs. Commissioner of Central Excise, Delhi-III reported at 2018 (364) ELT 980 (Tri.-Chan.).

4. We have carefully gone through the record of the case and submissions made. We note that the appellant had paid appropriate central excise duty on goods cleared by them from 01.03.2005 to 12.05.2005 and after six months of the payment of the appropriate duty, officers of the Department of Revenue through oral direction on 21.01.2006 made the appellant debit Rs.5,48,144/- in their cenvat account. The said debit was not assessed to duty through any proceedings. Therefore, the appellant had taken *suo moto* credit of the said amount. Learned counsel for the appellant has relied on the ruling by Hon'ble Rajasthan High Court in the case of Union of India vs. J.K. Laxmi Cement Ltd. reported at 2018 (8) GSTL 231 (Raj.). For the sake of ready reference, we reproduce para 2 to para 11 of the said judgment below:-

*"**2.** Briefly the facts giving rise to the present appeal are that during the period of March, 2005-06, the assessee utilised their CENVAT credit amount for the payment of output transportation service. As there was a circular dated 23-8-2007 which directs that on output transportation service, the service tax is required to pay in cash. Since the assessee had utilised the CENVAT credit amount for the payment of service tax. Therefore, the proceedings were initiated against the assessee to pay the service tax in cash. When the matter was pending before the Commissioner (Appeals), a direction was given to the assessee to make a pre-deposit of the entire amount of service tax in cash. The assessee in pursuance to the order passed by the Commissioner (Appeals) deposited the service tax in cash and*

simultaneously has suo motu credited the same amount of service tax which was paid through the CENVAT credit account. That a show cause notice was issued to deny the suo motu credit taken by the appellant. The proceedings were undertaken and ultimately it was held that the assessee cannot suo motu credit the amount in its account. The Tribunal ultimately held that in view of the Hon'ble Gujarat High Court and Karnataka High Court judgments, the assessee was entitled to suo moto credit the amount in its account as duty cannot be paid twice and it was just the correction/reversal of the entries which was done by the assessee and there was nothing wrong in the same. The Tribunal, therefore, held the action of the assessee to be valid.

3. *Aggrieved of the order passed by the Tribunal, the Revenue has assailed the order dated 25-3-2015 vehemently submitting that in view of the circular dated 23-8-2007, the amount with respect to the service tax for payment of GTA can be paid by cash only and, therefore, the reversal of entries or the suo motu credit by the assessee was not permissible by law.*

4. *We have heard learned counsel for the parties.*

5. *Learned counsel for the revenue submits that in view of the circular as well as provisions of law, the assessee cannot be permitted to reverse the entries and in fact should have applied for refund of the amount due to him.*

6. *Counsel for the assessee on the other hand has submitted that in view of the judgments of the Hon'ble Gujarat High Court and Karnataka High Court it is only the correction of entries which is being done by the assessee and further the asessee cannot be taxed twice as he has already deposited the demand of service tax by way of cash, therefore, the amount which has been paid through his CENVAT credit account is required to be reversed.*

7. *The somewhat similar controversy came up before the Gujarat High Court in case of S. Subrahmanyan & Co. v. Commissioner, 2011 (268) E.L.T. 497 which has held as under : -*

> *"In the present case, we do not need to expand the issue by examining the question of refund under Section 11B of the Central Excise Act, Since facts are*

rather peculiar and simple. As held and observed by the Tribunal, the respondent had already paid excise duty of Rs. 3.58 lacs. Part of the VAT was not paid. While paying difference, the respondent erroneously once over-paid the excise duty of Rs. 3.58 lacs. This mistake was detected shortly thereafter and before the end of the month, the respondent made necessary, entries in the Cenvat Register and corrected the mistake. The Tribunal only viewed it as an arithmetical error which the respondent was authorized to correct.

Insofar as the finding of the Tribunal that basic excise duty of Rs. 3.58 lacs was already paid by the respondent earlier and it was repaid while depositing the differential VAT duty was concerned, the Department has not raised any serious objection either in this tax appeal or before us through oral submissions. We therefore proceed on such basis. That being the situation, all that the respondent did was to correct the arithmetical error by making necessary entries in the register even before filing the form at the end of the month before the Excise Authorities. In the present case, when we find that there was nothing to be adjudicated upon, the mistaken double payment of excise duty made and when the amount is also not very large, we would not like to interfere with the judgment of the Tribunal keeping the larger question of suo motu claim of refund open to be judged in an appropriate case."

8. *The Karnataka High Court in case of Commissioner of C. Ex., Bangalore-III v. Motorola India Pvt. Ltd., 2006 (206) E.L.T. 90 (Kar.) which has held as under : -*

"The Tribunal, after noticing the material facts has chosen to allow the claim on the basis that the amount paid by mistake cannot be termed as duty in the case on hand. The Tribunal also stated that the time-bar does not apply in such cases. Somewhat in similar circumstances, the Apex Court in India Cements Ltd. v. Collector of Central Excise - 1989 (41) E.L.T.

> *358 has chosen to accept the case of the assessee. The Madras High Court subsequently noticing the judgment of the Supreme Court has also chosen to hold that the claim is reasonable on the facts of this case. In the light of the case laws, we are of the view that the order of the Tribunal does not require any interference by us. No question of law arises. The order is based on the law laid down by the Apex Court."*

9. *Therefore, in view of the judgment of the Gujarat High Court there is no error committed by the Tribunal while holding that the amount which has already been paid in cash to satisfy the demand of the revenue with respect to the service tax on GTA is fulfilled, there was no question of not reversing the amount paid from their CENVAT credit account. Further, the circular is dated 23-8-2007 and the period in question is March, 2006 to March, 2007, therefore the Tribunal was right in holding that the circular dated 23-8-2007 is having no application.*

10. *We are of the view that the order passed by the Tribunal is not required to be interfered with as the revenue's demand for payment of service tax on GTA has already been done by the assessee by paying the service tax amount in cash and, therefore, the amount paid from CENVAT credit account was required to be reversed.*

11. *Accordingly, there is no force in the appeal preferred by the Revenue, the same is hereby dismissed."*

We note that Revenue has relied on various final orders of this Tribunal whereas the appellant has relied on the ruling by Hon'ble High Court. Therefore, we do not go into the final orders relied upon by Revenue and note that Hon'ble Rajasthan High Court has held that when cenvat credit is debited, in addition to regularly assessed duty, then the appellant can take *suo moto* credit of such debit of cenvat credit. In the present case we note that the amount debited in cenvat account by the appellant at the instance of officers of Department of Revenue was not adjudicated upon, was not assessed to duty nor was appropriated. We further note that sub-rule (4) of Rule 3 of Cenvat Credit Rules, 2004 provides for manner of utilization of cenvat credit. As per the said provisions, cenvat credit can be utilized for payment of any duty of excise on final product, or on removal of partially processed goods, or on removal of capital goods as such, or for payment of service tax. The debit involved in the present appeal was not in respect of any of such requirements as provided under sub-rule (4) of Rule 3 of Cenvat Credit Rules. In the ruling by Hon'ble Rajasthan High Court the said cenvat credit was debited, in addition to the service tax paid through cash and Hon'ble High Court has held that the appellant before them was eligible to take *suo moto* cenvat credit of that amount. Following the said ruling, we hold that the present appellant was eligible to take *suo moto* cenvat credit of Rs.5,48,144/- and there was no need for them to file application for refund under Section 11B of Central Excise Act, 1944.

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

(Order pronounced in the open court on 05.11.2024)

(Anil G. Shakkarwar)
Member (Technical)

(Dr. Suvendu Kumar Pati)
Member (Judicial)

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