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

EXCISE APPEAL NO. 85392 OF 2021
(Arising out of Order-In-Appeal No. AJV/154-158/RGD APP/2020-21 dated 26.10.2020 passed by Commissioner of Central Tax, CE & ST. Raigarh (Appeals).)

M/s. Pearsons Drums & Barrels Pvt. Ltd.
Plot no. L, 103,
MIDC, Taloja,
Raigad, Maharashtra-410 208.

Appellant

Vs.

Commissioner of Central Excise, Belapur
C.G.O. Complex, 5th Floor,
Sector-10, Plot no. 1,
Section-17, Khandeshwar,
Mumbai-400 614.

Respondent

Appearance:
Shri Prasannan S. Namboodiri, Advocate for the Appellant.

Shri L.B.D'coasta, Deputy Commissioner, Authorized Representative for the Respondent.

CORAM:
HON'BLE MR. ANIL.G.SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 28.03.2025
Date of Decision: 21.04.2025

<u>FINAL ORDER NO :- A/85723/2025.</u>

Brief facts of the case are that certain investigations were carried out against the appellant and on the basis of said investigations, a show cause notice dated 23.11.2005 was issued demanding Central Excise duty of Rs. 37,848/- from the appellant on the basis of allegations that appellant had clandestinely removed manufactured goods without payment of Central Excise Duty by issuing parallel invoices. Through the said show cause notice Cenvat credit amounting to Rs. 20,96,988/- availed by the appellant on the basis of 61 invoices of inputs was proposed to be denied and recovered stating that the said 61 invoices were received but the inputs covered by said 61 invoices were not received in the factory. The appellant contested the allegations. However, the original authority through his order-in-original dated 30.03.2006 confirmed the Central Excise Duty of Rs. 37,848/- and denied Cenvat credit of Rs. 20,96,988/- and imposed penalties. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) who decided the said appeal through his order-in-appeal dated 12.01.2007 and set aside the said order-in-original dated 30.03.2006. Aggrieved by the said order-in-appeal dated 12.01.2007, Revenue preferred appeal before this Tribunal which decided the said appeal through Final Order No. A/92369/2017 dated 14.07.2017. This Tribunal through the said Final Order have set aside said order-in-appeal dated 12.01.2007 and remanded the matter to learned Commissioner (Appeals). Learned Commissioner (Appeals) has decided the appeal before him on such demand through impugned order-in-appeal dated 26.10.2020. Through the said order-in-appeal dated 26.10.2020, Central Excise Duty was again confirmed and Cenvat credit was denied. Aggrieved by the said order, appellant is before this Tribunal.

2. Heard the learned counsel for the appellant. The learned counsel for the appellant has submitted that Central Excise Duty of Rs. 37,848/- is demanded on the basis of few invoices which were having the same serial no. as that of invoices through which goods were removed on payment of Central Excise Duty and it was alleged that through the said parallel invoices goods were clandestinely removed without payment of duty. He has submitted that Revenue has not carried out any investigation as to whether the persons in the name of whom such invoices were raised have received the said goods, which transportation was used for transport from where the raw materials were procured for manufacture of such goods which were allegedly clandestinely removed and therefore the clandestine manufacture was not established and therefore the said finding of lower authority is not in accordance with the law. He further submitted the Revenue's case is that appellant had received 61 invoices in respect of inputs for manufacture of final products and input stated therein were not received and therefore the learned Commissioner (Appeals) has denied Cenvat credit of Rs. 20,96,988/-. He has submitted that there were no investigations made as to how final products were manufactured without receipt of inputs when Revenue has accepted the Central Excise Duty paid on final products manufactured.

3. Heard the learned AR who has supported the impugned order.

4. I have carefully gone through the records of the case and submissions made. I find that the issues to be decided by me are whether the goods that were alleged to be clandestinely removed have never been manufactured and whether the inputs on which Cenvat credit availed were received by the Appellant. From the record and submissions by learned counsel for the appellant, I note that Revenue has not carried out any investigation as to by whom the goods stated in alleged parallel invoices were received, whether such goods were received by the persons to whom such invoices were alleged to have been issued and from where the raw material and inputs required for manufacture of such goods were procured. There is no investigation on

discrepancy in the record of manufacture either. I, therefore, hold that the allegation that the goods manufactured by the appellant were clandestinely removed is not established. I, further, note that Revenue has not carried out any investigation as to how appellant has manufactured goods without receiving inputs involved in 61 invoices. I find that Revenue has accepted Central Excise Duty paid on final products which were manufactured out of the inputs that were allegedly not received by the appellant. Revenue has not carried out any investigation as to how appellant could manufacture final products without receipt of inputs. Therefore, I hold that the allegation that appellant had received only the invoices and not the inputs is not established. I, therefore, hold that the appellant is entitled for Cenvat credit of Rs. 20,96,988/-. Further, Revenue could not make out a case for recovery of Central Excise Duty of Rs. 37,848/-.

5. In view of the above findings, I set aside the impugned order-in-appeal and allow the appeal.

(Order pronounced in open court on 21.04.2025)

(ANIL.G.SHAKKARWAR)
MEMBER (TECHNICAL)

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