2020-TIOL-1052-CESTAT-KOL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA

Excise Appeal No. 75230 of 2019

Arising out of Order-in-Appeal No. 454/HWH/CE/2018-19, Dated: 08.11.2018
Passed by the Commissioner of CGST & Central Excise (Appeals-II), Kolkata

Date of Hearing: 19.11.2019
Date of Decision: 19.11.2019

M/s ANMOL INDUSTRIES LTD
MAITYPARA, DELHI ROAD, MARIGALA, BARTAL, DANKUNI
HOOGHLY-711224

Vs

COMMISSIONER OF CGST, CENTRAL EXCISE
HOWRAH, COMMISSIONERATE, 15/1, STRAND ROAD
M. S. BUILDING KOLKATA, WEST BENGAL-700001

Appellant Rep by: Shri Ankit Kanodia, CA
Respondent Rep by: Shri K Chowdhury, AR

CORAM: P K Choudhary, Member (J)

CX -

The assessee is engaged in business of manufacture of different varieties of Biscuits - Based on an EA, 2000 audit of the excise and service tax records of assessee for the period 2013-14 and 2014-15, a SCN was issued alleging irregular availment of Cenvat credit - The assessee has also produced a CA certificate showing the reversals made for FY 2014-15 on account of following the procedure as per Rule 6(3) of CCR, 2004 - Also a verification report as submitted by Range office of assessee is placed on record which shows that they had actually reversed Cenvat credit following the said process for FY 2014-15 - The assessee cannot be asked to pay more than what it has actually availed - In this regard, reference made to the decision of Tribunal in case of ***M/s MERCEDES BENZ INDIA (P) LIMITED*** 2015-TIOL-1550-CESTAT-MUM which has carved out the intent of legislature as regards reversal of amount if no option is exercised under Rule 6(3) by an assessee - Applying the same principles in the instant case, assessee cannot be asked to reverse more than the actual Cenvat credit availed by them and based on CA certificate and Range report, there is no doubt as to the fact that the assessee has actually followed the process of proportionate reversal under Rule 6(3) of CCR, 2004 - Thus, the demand on the said ground is set aside - As regards imposition of penalty, the disputed amount had been paid before the issuance of SCN, and the entire amount was paid alongwith interest - Therefore, the payment of duty should have been treated as payment of central excise duty under Section 11A (2B) of the Act and the SCN should not have been issued - Additionally, the Revenue has not been able to prove beyond reasonable doubt, the presence of fraud, collusion, willful misstatement or suppression of facts on the part of assessee - Therefore, imposition of penalty under Section 11AC of the Act is unwarranted: CESTAT

Appeal allowed

Case laws cited:

FINAL ORDER NO. 76872/2019

Per: P K Choudhary:

The appellant assessee is in appeal against the Order-in-Appeal dated 08/11/2018 for confirmation of demand of Rs.4,62,741/- as irregular Cenvat credit belonging to another unit of the appellant alongwith interest and penalty for the period 2013-14 and 2014-15.

2. Briefly stated, the facts of the case are that the appellant, M/s. Anmol Industries Limited, is engaged in the business of manufacture of different varieties of Biscuits falling under Chapter No. 19 of the Central Excise Tariff Act, 1985.

3. Based on an EA 2000 audit of the excise and service tax records of the Appellant for the period 2013-14 and 2014-15, a Show cause notice dated 26.05.2016 was issued alleging irregular availment of Cenvat credit to the tune of Rs.4,62,741/-. The said SCN culminated into Order-in-Original dated 16/02/2018 wherein the Adjudicating authority confirmed the total demand as proposed in the Show Cause Notice alongwith interest and imposed penalty and ordered for appropriation of amount of Rs.251,816/- as duty and interest of Rs.77,840/- as paid by the Appellant. On Appeal before the Commissioner (Appeals), the Ld. Commissioner (Appeals), confirmed the total demand alongwith consequential interest and penalty. Hence, the present appeal before the Tribunal.

4. Shri Ankit Kanodia, CA, appeared on behalf of the appellant and Shri K. Chowdhury, A.R. appeared on behalf of the respondent department.

5. The Ld. CA appearing for the appellant submitted that the dispute relates to availment of Cenvat credit on invoices raised by the suppliers on Orissa unit of the Appellant in West Bengal unit registration. He submitted that the Appellant company was following the process of proportionate reversal of Cenvat credit under Rule 6(3)(b) of the Cenvat Credit Rules, 2004 and that the appellant has already reversed maximum of the total credits for the FY 2014-15 and that even if at all the reversal has to be done, it cannot exceed the amount left after reversal of such amounts already reversed by the Appellant, which the Appellant has already reversed with interest. He also stated that for the FY 2013-14 the Appellant has already reversed the total amount with interest thereon. He further contended that there is no scope to impose any penalty in the given case of the Appellant as the Appellant had revesed the amount of Cenvat credit on receipt of audit memo with interest and thus the question of invoking extended period of limitation does not arise. He relied on various decisions on account of non-imposition of penalty.

6. The learned Authorized Representative for the Revenue, on justified the impugned orders.

7. Heard both sides and perused the appeal records.

8. The short issue that arise for consideration in the instant appeal is whether the Appellant is required to again reverse the full amount of Cenvat credit on account of ineligibility of Cenvat credit availed by the Appellant during the period in which the reversal of Cenvat credit as per the procedure laid down Rule 6(3) (b) of the Cenvat Credit Rules, 2004 for proportionate reversal of Cenvat credit during the said period has already been done by the Appellant. The Appellant has also produced a CA certificate showing the reversals made for the FY 2014-15 on account of following the procedure as per Rule 6(3) of the Cenvat Credit Rules, 2004. Also a verification report as submitted by the Range office of the Appellant is placed on record which shows that the Appellant has actually reversed Cenvat credit following the said process for FY 2014-15. From the above noted facts, I find that the Appellant cannot be asked to pay more than what it has actually availed. In this regard I would like to take reference to the decision of the Tribunal in the case of
M/s MERCEDES BENZ INDIA (P) LIMITED VS COMMISSIONER OF CENTRAL EXCISE, PUNE-I - 2015-TIOL-1550-CESTAT-MUM which has carved out the intent of the legislature as regards reversal of amount if no option is exercised under Rule 6(3) by an assessee. It has been noted that –

> ***"Rule 6 of the CCR is not enacted to extract illegal amount from the assessee. If this is the objective then at the most amount which is to be recovered shall not be in any case more than Cenvat Credit attributed to the input or input services used in the exempted goods. The main objective of Rule 6 is to ensure that the assessee should not avail the Cenvat Credit in respect of input or input services which are used in or in relation to the manufacture of the exempted goods or for exempted services. The Legislature has not enacted any provision by which Cenvat credit, which is other than the credit attributed to input services used in exempted goods or services can be recovered from the assessee"***

9. Applying the same principles in the instant case, I hold that the Appellant cannot be asked to reverse more than the actual Cenvat credit availed by the Appellant and based on the CA certificate and Range report there is no doubt as to the fact that the Appellant has actually

followed the process of proportionate reversal under Rule 6(3) of the Cenvat Credit Rules, 2004. Thus, I set aside the demand on the above ground. As regards imposition of penalty, I find that the disputed amount had been paid before the issuance of the show cause notice, and the entire amount was paid alongwith interest. Therefore, I am of the view that the payment of duty in the instant case should have been treated as payment of central excise duty under Section 11A (2B) of the Act and the show cause notice should not have been issued. Additionally, the Revenue has not been able to prove beyond reasonable doubt the presence of fraud, collusion, willful misstatement or suppression of facts on the part of the appellant. Therefore, imposition of penalty under Section 11AC of the Act is unwarranted.

10. Accordingly, the appeal filed by the appellant is allowed.

(Operative portion of the order already pronounced in the Open Court)