2020-TIOL-407-CESTAT-KOL

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH, KOLKATA
COURT NO. I

Ex. Appeal No. 75231 of 2019

Arising out of Order-in-Appeal No.464/HWH/CE/2018-19, Dated: 09.11.2018
Passed by Commissioner of CGST & Central Excise, Appeals-II, Kolkata

Date of Hearing: 19.11.2019
Date of Decision: 04.02.2020

M/s ANMOL INDUSTRIES
MAITYPARA, DELHI ROAD, MRIGALA, BARTAL
DANKUNI, DISTT. HOOGHLY, PIN-711224

Vs

COMMISSIONER OF CGST AND CENTRAL EXCISE
HOWRAH, M. S. BUILDING, CUSTOMS HOUSE
15/1 STRAND ROAD, KOLKATA-700001

Appellant Rep by: Mr Ankit Kanodia, CA
Respondent Rep by: Mr K Choudhary, AR

CORAM: P K Choudhary, Member (J)

CX - CENVAT - Dispute relates to availment of Cenvat Credit on same set of invoices twice amounting to Rs. 2,87,060/- and availment of input credit of duty more than the duty amount shown in the relevant invoices for the period 2014-15, amounting to Rs. 18,470/- including cess - appellant submits that by following the process of proportionate reversal of Cenvat credit under Rule 6(3)(b) of the CCR, 2004 they have reversed the amounts along with interest on receipt of audit memo and thus the question of invoking extended period of limitation and imposing penalty does not arise - as demand confirmed, appellant is before CESTAT.

Held:
Appellant cannot be asked to pay more than what it has actually availed - Coordinate Bench of the Tribunal in the case of M/s MERCEDES BENZ INDIA (P) LIMITED - **2015-TIOL-1550-CESTAT-MUM**
has carved out the intent of the legislature as regards reversal of amount if no option is exercised under Rule 6(3) of CCR by an assessee - Appellant cannot be asked to reverse more than the actual Cenvat credit availed and based on the Chartered Accountant's certificate and Range Officer's 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 CCR, 2004 - since the disputed amount had been paid before the issuance of the show cause notice along with interest, payment has to be considered as having made 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 u/s 11AC is unwarranted - appeal allowed: CESTAT [para 8 to 10]

Appeal allowed

Case law cited:

MERCEDES BENZ INDIA (P) LIMITED VS COMMISSIONER OF CENTRAL EXCISE, PUNE-I - 2015-TIOL-1550-CESTAT-MUM... Para 8

FINAL ORDER NO. 75219/2020

Per: P K Choudhary:

The appellant assessee is in appeal against the Order-in-Appeal dated 09/11/2018 for confirmation of demand of Rs. 3,05,530/- as irregular Cenvat credit on account of double Cenvat credit taken and excess Cenvat credit taken on invoices of suppliers along with 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 Central 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, it was issued with a Show cause notice dated 26.05.2016 alleging irregular availment of Cenvat credit to the tune of Rs.3,05,530/- along with interest and penalty. The said SCN culminated into Order-in-Original dated 30/01/2018 wherein the Adjudicating authority confirmed the total demand as proposed along with interest and penalty and ordered for appropriation of amount of Rs. 130,992/- as duty and interest of Rs. 33,622/- as paid by the Appellant. On Appeal, before the Lower Appellate Authority, the Ld. Commissioner (Appeals), upheld the Adjudication Order and rejected the appeal before him. Thus, 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. Chartered Accountant appearing for the appellant submitted that the dispute relates to availment of Cenvat Credit on same set of invoices twice amounting to Rs. 2,87,060/- and availment of input credit of duty more than the duty amount shown in the relevant invoices for the period 2014-15 as per annexure, amounting to Rs. 18,470/- including cess. He submitted that the Appellant company was following the process of proportionate reversal of Cenvat credit under Rule 6(3)(b) of the CCR, 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 reversed 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 many judgments on account of non imposition of penalty as held by the Tribunal.

6. The learned Authorized Representative for the Revenue, on the other hand, reiterates the order of the first appellate authority.

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 under Rule 6(3)(b) of the CCR, 2004 for proportionate reversal of Cenvat credit during the said period has already been done by the Appellant. The Appellant has also produced a Chartered Accountant's certificate showing the reversals made for the FY 2014-15 on account of following the procedure as per Rule 6(3) of the CCR, 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 find that the Coordinate Bench 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
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. The Tribunal has 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 the 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 current 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 Chartered Accountant's certificate and Range Officer's 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 CCR, 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 along with interest. Therefore, I am of the considered 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.

(Pronounced in open Court on 04.02.2020)