
(2023) 06 CESTAT CK 0021

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 87119 Of 2019

Khandelwal Laboratories P. Ltd

APPELLANT

Vs

Commissioner Of CGST & CE, Mumbai III

RESPONDENT

Date of Decision : 13-06-2023

Acts Referred:

Central Excise Rules, 1944 — Rule 57A, 57G

Citation : (2023) 06 CESTAT CK 0021

Hon'ble Judges : Ajay Sharma, Member (J)

Bench : Single Bench

Advocate : Virat Chavda, Xavier Mascarenhas

Final Decision : Allowed

Judgement

Ajay Sharma, Member (J)

1. This appeal has been filed from the impugned Order dated 11.06.2018 passed by the Commissioner (Appeals Thane), GST & Central Excise, Mumbai rejecting the appeal filed by the appellant.

2. The period in issue is 1995-96. This case has a chequered history So many times it has been remanded either by the Hon'ble High Court or by this Tribunal or by the Commissioner (Appeals). The facts leading to the filing of the appeal are stated in brief as follows. The appellant are engaged in manufacturing of P & P medicines. At the relevant point of time they are engaged in manufacture of anti-cancer drugs on behalf of M/s. German Remedies and the name of the said M/s. German Remedies was appearing on the Bills of Entry of the imported raw material/input required for manufacturing the aforesaid drug. During the period in issue the appellant availed the Modvat Credit total amounting to Rs.18,89,616/- which was denied to them by the department on the ground that under Rule 57A of Central Excise Rules, 1944 for taking Modvat Credit it is required that the duty paying documents of the inputs should be in the name of the assessee who is taking and availing the credit and as in this case the Bills of

Entry was not in their name but in the name of M/s. German Remedies on whose behalf the appellant was carrying out the manufacturing activities therefore they are not eligible and have wrongly availed the said credit. Accordingly, four show-cause-cum-demand notices dated 14.7.1995, 27.11.1995, 29.2.1996 & 2.5.1996 respectively were issued to them and were adjudicated by the Adjudicating Authority vide Order-in-Original dated 23.10.1997 confirming the demand raised in the show cause notices alongwith penalty of Rs.2 lacs. On appeal filed by the appellant, the first appellate authority vide Order-in-Appeal dated 16.10.1998 remanded the matter back to the adjudicating authority. Upon remand, the Adjudicating Authority vide its order dated 2.11.1999 again confirmed the demand raised in the aforesaid four show cause notices alongwith the penalty of Rs.2 lacs. On Appeal, the first appellate authority also rejected the same in view of the decision of the Tribunal in the matter of Balmer Lawrie & Co. Ltd. vs. CCE, Kanpur; 2000(116) ELT 364 (Tri.). Later on this Tribunal vide order dated 6.12.2005 also rejected the 2nd appeal of the appellant citing the same decision i.e. Balmer Lawrie & Co. Ltd. (supra). The appellant filed appeal before the Hon'ble High Court of Judicature at Bombay and the Hon'ble High Court vide its order dated 8.12.2010 remanded the matter back to the Tribunal to be decided afresh in the light of the decision of the Hon'ble High Court in the matter of Marmagaoa Steel Ltd. vs. Union of India; 2005 (192) ELT 82 (Bom.) and this Tribunal in turn remanded the matter back to the first appellate authority to reconsider the issue. The first appellate authority vide impugned order dated 11.06.2018 rejected the appeal of the appellant on the ground that the appellant have failed to establish with relevant documentary evidences the receipt of the impugned goods in their manufacturing premises.

3. I have heard learned counsel for the appellant and learned authorised representative for the revenue and perused the case records including the written submissions placed on record by the respective sides. As per the show cause notices the case of the department is that the appellants have taken credit on the basis of the Bills of entry which were not in their name but in the name of M/s. German Remedies and therefore they are not eligible to take the credit and the said stand of the department was later supported by this decision of the Larger Bench of the Tribunal in the matter of Balmer Lawrie & Co. Ltd. (supra). But the said decision of the Tribunal was distinguished by the Hon'ble High Court in the matter of Marmagaoa Steel Ltd. (surpa) by holding that Rule 57G ibid does not require that the bill of entry should be in the name of the person claiming credit of duty and what is required to be established for taking credit is that the goods used as inputs are duty paid and the credit of duty paid on the said goods has not been taken. The said view of the Hon'ble High Court has been upheld by the Hon'ble Supreme Court in an appeal filed by the department against the decision of the Hon'ble High Court which has been reported in 2008 (229) ELT 481 (SC) titled as Union of India vs. Marmagaoa Steel Ltd. When the show cause notices have been issued for rejecting the credit only on the ground that bills of entry were not in the name of the appellant then it is not open for the

Commissioner (Appeal) to go in any other issue as no one can go beyond the show cause notice and the said ground itself is sufficient to set aside the impugned order. While remanding the matter back to the first appellate authority, this Tribunal has specifically recorded that the appellant was stating before the lower authorities that they had received the material/inputs covered under the bills of entry and the said bills of entry had endorsement alongwith dealer's invoice. The said bills of entry alongwith endorsement in their favour, which the appellant placed before the learned commissioner, have also been placed on record in the instant appeal filed by the appellant and I have gone through the said bills of entry and endorsement therein alongwith the entries in the RG23A and also the gate register and am of the view that goods covered with the bills of entry in issue have been received by the appellant and the same were consumed in their manufacturing premises. Therefore the Appellant is eligible to avail the Modvat Credit and has rightly availed the same.

4. Accordingly the impugned order is set aside and the appeal filed by the appellant is allowed