(2021) 07 CESTAT CK 0054

In the Customs, Excise And Service Tax Appellate Tribunal

M/s. Bengal Beverages Private Limited — APPELLANT

Vs

Commissioner Of CGST And CX, Howrah Commissionerate — RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 22
Cenvat Credit Rules, 2004 — Rule 15(2)
Central Excise Act, 1944 — Section 11AC

Citation : (2021) 07 CESTAT CK 0054

Hon'ble Judges : P. K. Choudhary, J;Raju, Technical Member

Bench : Division Bench

Advocate : Ankit Kanodia, S.S.Chattopadhyay

Final Decision : Allowed

Judgement

1. The present appeal has been filed by the assessee being aggrieved with the Order-in-Original dated 19th December 2017 passed by the learned Commissioner, whereby the demand of excise duty of Rs.5,65,53,696/- has been confirmed for the period 2012-13 to 2015-16, along with interest and penalty as proposed in the Show Cause Notice dated 27th April, 2017.

2. Briefly stated, the facts of the case are that the appellant is engaged in the manufacture of aerated water and fruit-based beverages classifiable under Chapter 22 of the First schedule to the Central Excise Tariff Act, 1985. During an investigation carried out by the Anti Evasion Unit of the erstwhile Dankuni Central Excise Division at the premises of the appellant, it was noticed that there was a mis-match between the consumed quantity of inputs between assessee's stock account of raw materials (i.e. RG 23A Pt.1) and ER 6 returns for the period 2012-13 to 2015-16 wherein the consumption as per stock account of major raw materials namely pre form, sugar and essence was higher than the same as per ER 6 returns filed by the Appellant for the above period. The above lead to summons proceeding wherein the Appellant provided detailed workings to show that there was no excess consumption as per stock account and the same merely

represented movement of goods within the premises of the Appellant between three units under the same excise registration number and within the same compound manufacturing similar products i.e. aerated beverages and fruit based beverages in all the three units concerned. However, the department proceeded to issue the Show Cause Notice alleging excess availment of Cenvat credit based on consumption of raw materials as per stock account and recovery thereof along with interest and penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with section 11AC of the Central Excise Act, 1944 by invoking extended period of limitation and alleging suppression of facts by the Appellant. The appellant by its letter dated November 2, 2017 duly replied to the said show cause - cum - demand notice pointing out inter alia that the Appellant has 3 units within the same manufacturing complex having single excise registration and that it uses common raw material such as pre-form, essence and sugar in manufacturing aerated beverages and other fruit based drinks in all its units. That it transfers various raw materials between its units in the same complex and records the same in its stock records for both the units i.e. the transferring unit and the receiving unit. Thus, if one looks at the stock records of individual units, the consumption of raw material in the transferring unit would be having certain quantity of raw material sent by the unit to another unit. Similarly the receiving unit would account for the same as received from the transferring unit and would show the same in its consumption also once used in manufacture of finished goods. However, at the company level and for the purposes of excise, all the units are treated as one single assessee and hence the inter unit stock transfer is netted off as the same is merely an accounting entry and accordingly in ER 6 also the Appellant reports the netted off consumption of its principle raw materials. The Appellant further contended that demand is based only on the figures alleging difference in consumption of raw materials between stock records and ER 6 for the years 2012-13 to 2015-16 without any other substantive allegation in this regard. The Appellant also stated that the demand of duty can be established in the present case if the basic allegation of purchase of raw materials and removal of finished goods clandestinely is proved against the Appellant, which has not at all been discussed or touched upon by the Ld. Adjudicating authority which proves that there is no excess availment of Cenvat credit. The appellant further contended that the said show cause - cum - demand notice was substantially barred by limitation. The adjudicating authority after discussing the inter unit transfer of raw materials, still proceeded to confirm the demand of recovery of Cenvat credit along with interest and penalty as proposed in the show cause cum demand notice. Hence, the present appeal before the Tribunal.

3. Shri Ankit Kanodia, learned Advocate, appeared on behalf of the Appellant. He contended that the recovery of Cenvat credit is not sustainable for the following reasons:

(i) There has been no investigation conducted by the department to prove that the Appellant has procured raw materials in excess from what it has availed

Cenvat credit on from any of the suppliers and also that there is no allegation as to manufacture of finished goods from such excess consumption of raw materials and clearance of the same without payment of excise duty;

(ii) That the demand is based only on the incorrect interpretation of the consumption figures as per the stock account maintained by the Appellant for all the three units under same excise registration number and showing inter unit movement of raw materials between the same vis a vis the consumption as per ER 6 returns filed by the Appellant for the years 2012-13 to 2015-16 without any other substantive allegation;

(iii) the adjudicating authority has discussed the inter unit transfer issue of raw materials, yet confirmed the demand without any reasoning as to the same

(iv) the confirmation of demand is the resultant outcome of an inference drawn regarding more availment and less consumption of the inputs which is factually incorrect.

(v) That the Appellant has already provided detailed reconciliation for the same before the Adjudicating authority which has been incorrectly interpreted by the Ld. Adjudicating authority.

(vi) That there is no difference whatsoever in consumption of raw materials as per ER 6 and as per the stock records maintained by the Appellant.

3.1 He further relied on the following judgments:

a. COMMISSIONER OF CENTRAL EXCISE, RAIPUR Versus MADHYA BHARAT PAPER LTD. 2017 (346) E.L.T. 317 (Tri. - Del.)

b. REAL ISPAT AND POWER LTD. Versus COMMISSIONER OF C. EX., RAIPUR 2015 (330) E.L.T. 311 (Tri. - Del.)

c. CONTINENTAL CEMENT COMPANY Versus UNION OF INDIA 2014 (309) E.L.T. 411 (All.)

3.2 The learned Advocate has also produced records of RG 23A Part 1 along with stock summary to show that the inter unit transfer of raw materials is clearly shown in its stock register and that the same cannot be considered as consumption in two units i.e. in the unit transferring the said input and the unit actually consuming the said input in manufacture of finished goods.

3.3. It is his submission that the demand is also barred by limitation as the demand covers the period from 2012-13 to 2015-16 whereas the SCN was issued on 27th April, 2017 much after the expiry of normal period of limitation.

4. The learned Authorized Representative appearing on behalf of the respondent, justified the order of the lower authority.

5. Heard both sides through video conferencing and perused the appeal records.

6. In the instant case, it is seen that the Adjudicating Authority has confirmed the demand of recovery of Cenvat credit only on the ground that there are differences in consumption of inputs as per stock register and ER 6 filed by the Appellant. It is the case of the department that the said Appellant has tried to suppress the relevant facts of availment and utilization of irregular Cenvat credit in fraudulent manner by way of showing higher quantity of consumption of inputs for production of finished goods in their stock statement as compared to their ER 6 return during the said periods. It is also the case of the department that the Appellant has availed excess Cenvat credit on differential quantity of inputs which were not at all used for manufacture of their finished products. However it is seen that such allegation is only on the basis of the figure work of the department without production of any other evidences for demand of reversal of Cenvat credit such as any investigations of suppliers of raw materials, recording of input output ratio of the Appellants finished goods etc.

Further, the Appellant has produced before us their RG 23 A Part 1 register and a summary of stock account also which clearly depicts that raw materials viz. preform, sugar and essence are used in all the three units of the Appellant under the same excise registration and under the same manufacturing complex. The department has also not objected to the above inter unit transfer of inputs as claimed by the Appellant. A sample stock account for preform as submitted by the Appellant before us as also the lower authorities is depicted below for better understanding of the matter at hand:

From the above table if one looks at the stock records of individual units, there is inter unit transfer from UNIT 3 TO UNIT 1 which is included in the total issued quantity of UNIT 3 whereas the same is shown as inter unit receipt from UNIT 3 in UNIT 1 stock account and is also a part of total receipt of UNIT 1 and thereby the same will also be a part of consumption of UNIT 1 in the column TOTAL ISSUED. The above inter unit transfer of raw materials which is captured by the Appellant in its stock account is netted off while filing ER 6 returns as the same is for a single excise registration number and all the units are treated as one single assessee. Thus, the moot allegation that the Appellant has shown excess consumption of inputs in its stock records cannot be sustained from what has been elaborated above.

Further, the adjudicating authority has also in the order stated the above findings but has proceeded to confirm the demand on other grounds such as incorrect challan numbers for transferring and receiving units which do not involve the moot allegation of excess consumption of raw materials on which the demand has been raised for recovery of Cenvat credit.

7. The Appellant have also produced a CA certificate showing the detailed reconciliation of each raw material type along with appeal paper book which goes to prove that the adjudicating authority has incorrectly understood the total matter at hand and proceeded to confirm the demand on irrelevant grounds.

8. We also agree to the point put forth by the Ld. Advocate appearing for the Appellant that there has been no allegation levelled against the Appellant in the entire proceedings showing the excess procurement of inputs and there has been no investigation in this regard by the department and hence the demand cannot be sustained in our view.

9. We would like to refer to the judgment of this Tribunal in the case of REAL ISPAT AND POWER LTD. Versus COMMISSIONER OF C. EX., RAIPUR 2015 (330) E.L.T. 311 (Tri. - Del.) wherein it was observed that:-

"9................In the present case, the allegation of inflated consumption of pig iron, iron and steel scrap and CPC is based only on calculations by the investigating officers which, in turn, are based on a series of assumptions regarding yield of mild steel from total raw materials charged, iron oxide content of sponge iron and out of which only 50% of iron oxide reacting with carbon, for which we do not find any concrete basis. No actual physical inspection to ascertain the actual proportion of sponge iron, pig iron, iron and steel scrap and CPC charged into furnace for manufacture of mild steel, and no tests to ascertain iron oxide content of sponge iron used, which were the easiest and simplest things to do have been done. In view of this, we hold that merely on the basis of assumptions of the department which are without any basis and the calculations based on these assumptions, the allegations of inflated consumption of pig iron, CPC and iron and steel scrap cannot be made against the appellant and the Cenvat credit demand based on such allegations would not be sustainable.

10. In view of the above discussions, the impugned orders are set aside. The appeals are allowed."

10. Thus going by the above judgment we find that no investigation has been conducted by the department to prove the allegation of excess consumption apart from incorrect assumptions and calculations in the case and thus the recovery of Cenvat credit merely based on differences in figures of consumption cannot be made by the department .

11. Further, on perusal of records, we find that the demand has been raised for the period 2012-13 to 2015-16 in 2017. No explanation has been furthered by the Department in respect of such gross delay in proceeding with the matter. Therefore, we find that invocation of the extended period of limitation is not justified.

12. In view of the above discussions and the settled legal judicial precedence and provisions contained in statutes referred to above, the demand for recovery of Cenvat credit only on assumption and presumptions cannot be sustained is accordingly set aside. Since demand of recovery of Cenvat credit is set aside, penalty and interest are also not sustainable.

13. The appeal filed by the Appellant is thus allowed with consequential relief, if any.

(Operative part of the order was pronounced in the Court.)