
(2023) 04 CESTAT CK 0027

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 78533 Of 2018, Excise Cross Objection No. 75133 Of 2019

M/S. Techmens Chemical Private Limited

APPELLANT

Vs

Commr. Of CGST & CX, Haldia Commissionerate

RESPONDENT

Date of Decision : 17-04-2023

Acts Referred:

Central Excise Rules, 2017 — Rule 21, 25
Central Excise Act, 1944 — Section 11A(1), 11AA

Citation : (2023) 04 CESTAT CK 0027

Hon'ble Judges : Rajeev Tandon, Member (T)

Bench : Single Bench

Advocate : N. K. Chowdhury, J. Chattopadhyay

Final Decision : Disposed Of

Judgement

Rajeev Tandon, Member (T)

1. The present appeal No. E/78533/2018 has been filed by M/s. Techmens Chemical Private Limited against the Order-in-Appeal No.25/Hal/CE/2018-19 Dated 04.05.2018. The Ld. Commissioner (Appeals) vide the said order has confirmed a duty demand of Rs.3,69,969/- (original demand confirmed by the Adjudicating Authority being Rs.4,46,727/-). To the extent of imposition of penalty by the Lower Authority, the Ld. Commissioner (Appeals) set aside the said order.

2. The Department has filed Cross Objections No. 75133/2019 against the impugned order passed by the Ld. Commissioner (Appeals) for:

(i) Reduction of the duty demand confirmed of Rs.3,69,969/- by Commissioner (A) as against Rs.4,46,727/- confirmed by the Lower Authority

(ii) Setting aside the penalty of Rs.10,000/- imposed by the lower Authority.

3. Heard both sides.

4. The Learned Advocate submitted that the present demand concerns a protective demand Show Cause Notice issued by the Department in a matter relating to certain goods destroyed in a fire incident at their factory on 18/10/2011. He submitted that intimation in this regard was given to the Department on 19/10/2011 and the Department had undertaken a joint stock verification thereto on the same day. The Appellants followed up their case for remission of duty under Rule 21 of the Central Excise Rules vide their application dated 27/12/2011. This remission claim was further modified vide application filed on 29 March 2012. It is their case that they had reversed an amount of Rs.2,02,623/- on 27/09/2012 towards the credit availed on inputs contained in the finished goods, lost on account of fire. They further reversed an amount of Rs.76,578/- due on account of interest and raw material/packaging material lost in fire. The Department had sought further information, which was duly supplied by them on 31st August 2012. Subsequently, a Show Cause Notice dated 06/11/2012 came to be issued to them demanding duty under Section 11A(1) along with interest under Section 11AA with a proposal to impose penalty under Rule 25 of the Central Excise Rules for non-payment of duty on 50. 665 MT of Coal Tar Pich, 48,000 MT of Dehydrated Coal Tar, 7.580 MT of Creosote Oil & 30.365 MT of Anthracene Oil claimed to have been destroyed by fire on 18.10.2011, and as also not being able to produce any order under Rules 21 ibid.

5. In response, the appellants pleaded for 60 days time to respond to the Show Cause Notice and also issued a letter dated 3/12/2012 to the Jurisdictional Commissioner requesting/interalia to expedite their case for remission of duty, on goods destroyed in the said fire.

6. It is further stated that it is only on 06/08/2014, that they came to learn of the rejection of their claim for remission of duty, by the Excise Appeal No. 78533 of 2018 Commissioner, vide letter C. No.V(30)8/Misc/Tech/HWD-II/13 dated 06/08/2014) issued by the Superintendent (Tech) Central Excise Howrah West-II Division.

6.1 For ready reference the said letter is reproduced as under:-

GOVERNMENT OF INDIA

OFFICE OF THE DEPUTY COMMISSIONER OF CENTRAL EXCISE 7 SERVICE TAX;
HOWRAH WEST DIVISION-II, 25 PRINCEP STREET, (4TH Floor), Kolkata-72

Dated: 08.08-2014

C. No.V(30)8/Misc/Tech/HWD-II/13/2992

To

M/s. Techmens' Chemicals Pvt. Ltd. Amaria, Kolorah, Dhulagarh Domjur

Dear Sirs,

Subject: Remission against Excise duty on Stock destroyed in Fire in the case of

M/s Techmens' Chemical Pvt Ltd. Amaria, Kolorah, Dhulagarh, Domjur-Corres reg.

Please refer to your letter dated 27.12.2011 regarding (remission under Rule 21 of C. Ex. Rules, 2002.)

Hence, I am directed to convey the order of Hon'ble Commissioner of Central Excise, Haldia Commissionerate in respect of the captioned subject that the Hon'ble Commissioner, Central Excise, Haldia Commissionerate in the light of the existing Rules and Regulations in this regard and after careful examination of the same, he has been pleased to reject the remission application filed M/s. Techmens' Chemical Pvt. Ltd.

Accordingly, you are requested to pay the appropriate Central Excise duty & Interest etc. against the excisable goods of Stock destroyed in Fire under proper head with intimation to this office.

Yours faithfully

Sd/-

(S. Dasgupta)

Suprintendent (Tech)

Central Excise

Howrah West-II Division

7. They however challenged this non-speaking order before the Tribunal and the same was disposed of vide FO No.75231/2018 dated 9. 03.2018. The protective demand Show Cause Notice was interalia confirmed vide Order-in-Original No.11/OIO/DC/CE/Adjn/HWD-II/2014 dated 29.08.2014. This Order-in-Original was subsequently challenged by them before Commissioner (Appeals) and is the subject matter of the impugned appeal.

8. It is observed that this Tribunal, with reference to the said rejection of the Remission Application filed by the appellant before the Jurisdictional Authority had vide its order No.FO/75231/2018 dated 09/03/2018 had held as under:-

8.1 4. Heard both sides and perused the appeal records.

5. The main submission of the Learned Counsel is that the impugned communication communicating the Order of the Commissioner is without giving any reason and therefore such order cannot be sustained. The learned Counsel also argued on the merits of the case.

6. I do not find it necessary to go the merits of the case at this stage for the reason that the communication of the Commissioner is without any reason. It is well settled law that any order or decision of the quasi judicial authority must be based on reasons. The order or decision without assigning any reason is nullity, passed in gross violation of principles of natural justice. Hence, the impugned

communication dated 06.08/2016 cannot be sustained. Accordingly it is set aside. The matter is remanded to the Adjudicating authority to decide afresh after considering the submission of the appellant and to pass order in accordance with law. The appeal is allowed by way of remand.

9. This Tribunal had thus remanded the matter to the Original Authority as it was passed in the violation of principles of natural justice and therefore being not sustainable. This Tribunal while remanding the matter to the Adjudicating Authority had specifically directed as under:

“to decide afresh after considering the submissions of the appellant and to pass order in accordance with law”.

10. It is the appellant's case that the remand order however remains non-complied with till date, and in the absence thereof, the confirmation Excise Appeal No. 78533 of 2018 of the demand by the Adjudicating Authority as also its subsequent decision in Appeal is bad in law and cannot be upheld.

11. I have gone through the facts on record. It is noted that in the given factual backdrop, confirmation of the protective demand raised, pursuant to the rejection of the remission application, howsoever authorized is a nullity in law, as this Tribunal has remitted back the matter of a decision on the remission application to the Adjudicating Authority. It is imperative that due consideration is given and a speaking order is pronounced in the matter of the remission application afresh by the lower authority. Any decision on the protective demand Show Cause Notice dated 06.11.2012 issued to the appellants can only be an outcome of the decision in the remission application, outcome of which under the present circumstances is yet pending decision..

12. Under the circumstances, the Order passed by the Learned Commissioner (Appeal) bearing OIA No. 25/Hal/CE/2018-19 Dated 4. 05.2018 is set aside and the original authority is directed to first comply with the orders of this Tribunal-FO No.75231/2018 dated 9 March 2018.

13. The Cross Objections filed by the Department are also disposed of in the above terms.