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CEXA/12/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction
ORIGINAL SIDE

COMMISSIONER OF CGST & CENTRAL EXCISE, HOWRAH COMMISSIONERATE

-Versus-

M/S. BENGAL BEVERAGES PRIVATE LIMITED

Appearance:
Mr. Uday Sankar Bhattacharyya, Adv.
Ms. Aishwarya Rajshree, Adv.
...for the appellant.

Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 25th August, 2022.

The Court : This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (the 'Act' for brevity) is directed against the order dated 30th July, 2021 passed by the Customs, Excise & Service Tax Appellate Tribunal, Eastern Zonal Bench, Kolkata, West Bengal, (the Tribunal) in Excise Appeal No.76345 of 2018.

The department has raised the following substantial questions of law for consideration:

" i) *Whether the Learned Tribunal committed substantial error of law by not holding that there was a mismatch between the consumed quantity of inputs between respondent's stock account of raw materials i.e. RG 23A Pt. 1 and ER-6 return for the period 2012-13 to 2015-16 ?*

ii) *Whether there are gross inconsistencies in the records maintained by the respondent and the respondent failed to disclose any substantive evidence against such inconsistencies and/or failed to clarify the same ?*

iii) *Whether the respondent availed and unilized irregular Cenvat Credit in fraudulent manner by showing higher quantity of consumption of inputs for production of finished goods in their stock account (RG-23A Pt. 1) as compared to ER-6 returns during the said period ?"*

We have heard Mr. Uday Sankar Bhattacharyya, learned standing counsel assisted by Ms. Aishwarya Rajshree, learned Advocate for the appellant/department and Mr. Ankit Kanodia, learned advocate assisted by Ms. Megha Agarwal, learned advocate for the respondent/assessee.

The assessee is engaged in the manufacture of aerated water and fruit-based beverages. An investigation was conducted by the Anti Evasion Unit of the Central Excise Department and it is alleged that there is mis-match with regard to the quantity of inputs consumed and the stock account of raw materials. Show cause notice dated 27th April, 2017 was issued for the period 2012-13 to 2015-16 by invoking the extended period of limitation. The show cause notice alleged excess availment of Cenvat credit based on consumption of raw material 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 Act. The assessee submitted their reply to the show cause notice dated 2nd November, 2017 stating that the assessee has three units within the same manufacturing complex having single registration and 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. Further, the assessee stated that it transferred various raw materials between its units in the same complex and recorded the same in its stock records for both the units i.e., the transferring unit and the receiving unit. Further, the assessee stated that for the purposes of excise, all units are treated as one single unit and hence the inter-unit stock transfer is netted off as the same is merely an accounting entry and accordingly in ER 6. The assessee reports the netted off consumption of the principal raw material. Further, the assessee stated that the allegation of difference in consumption of raw material between the stock record and ER 6 for the period in question is without any substantive allegation. Further, the assessee also stated that the show cause notice is barred by limitation. The adjudicating authority did not agree with the submission made by the assessee and by order dated 19th December, 2017 confirmed the proposal in the show cause notice.

Aggrieved by the same, the assessee filed appeal before the learned tribunal. Before the learned tribunal it was contended that no investigation was conducted by the department to prove that the assessee had procured raw materials in excess from what it has availed Cenvat credit from any of the suppliers and also that there is no allegation as to manufacturing of finished goods from such excess consumption of raw materials and clearance of the same without payment of excise duty. Further, the assessee contended that the entire demand is based on incorrect interpretation of consumption figures as per stock accounts maintained by the assessee for all these three units under the same excise registration and showing inter unit movement of raw material between the same unit namely, consumption as per ER 6 returns filed by the assessee for the years 2012-13 to 2015-16 without any substantive allegation. Further, the assessee contended that the adjudicating officer had, in fact, discussed the inter unit transfer issue of raw material and erroneously confirmed the demand without assigning any reason. Further, the assessee submitted that they have provided detailed reconciliation before the adjudicating officer which was not correctly interpreted. Thus, it was stated that there is no difference whatsoever in consumption of raw material as per ER 6 and as per stock records maintained by the assessee. Further, it was submitted that based on assumption and presumption, the show cause notice could not have been issued well beyond the period of limitation and the extended period of limitation could not have been invoked in the facts and circumstances of the case. Before the tribunal, while filing written submission, the assessee had also filed a compilation containing all the relevant records along with stock summary to show that inter unit transfer of raw material has been shown in its stock register and the same cannot be considered as consumption in two units i.e. individual unit transferring the said input and the unit actually consuming the said input in the manufacture of finished goods.

The learned tribunal after considering the submissions made by the assessee as well as the revenue and perusing the entire records placed before it, pointed out that the allegation made against the assessee is only on the basis of figure work of the department without production of evidence for demand of reversal of Cenvat credit such as conducting of investigation on suppliers of raw materials, recording of input-output ratio etc. Further, the learned tribunal took note of the RG 23A Part 1 register which was produced before the tribunal and a summary stock account and upon perusal of the same, the tribunal has recorded the factual finding that the registers clearly show that raw materials are used in all three units of the assessee under the same excise registration in the same manufacturing complex. Further, the tribunal has pointed out that the department has not objected to the inter unit transfer of input which was the consistent case of the assessee. The tribunal also examined the sample stock account for pre-form submitted by the assessee and, in fact, a screen shot of the said stock account has been incorporated in the order passed by the tribunal. After examining the facts and figures in the said stock account, the tribunal pointed out that 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 apart of total receipt of unit-1 and thereby the same will also be part of consumption of unit-1 in the column 'total issue'. Further, the tribunal was satisfied with the inter unit transfer of raw material as captured by the appellant in the stock account is netted off while filing ER 6 returns as the same is for single excise registration number and all units are treated as one single assessee. Therefore, after being satisfied with the factual position, the tribunal held that the assessee shown excess consumption of inputs in its stock records cannot be sustained. Furthermore, the tribunal noticed that the adjudicating authority has also stated the finding as recorded by the tribunal, but erroneously proceeded to confirm the demand on the alleged ground of incorrect challan numbers for transferring and receiving units. Further, before the tribunal, the assessee had produced the chartered accountant’s certificate showing the detailed reconciliation of each raw material type and the tribunal has found that the adjudicating authority has incorrectly understood the total matter and erroneously proceeded to confirm the demand on irrelevant ground. Furthermore, the tribunal had agreed with the submission made on behalf of the assessee that there is no allegation levelled against the assessee showing the excess procurement of inputs and there has been no investigation in this regard by the department. Further, with regard to invoking the extended period of limitation, the tribunal found there is absolutely no justification to do so and there is no explanation given by the department for the gross delay in initiating proceedings.

Thus, we find that the learned tribunal has examined the factual position and rightly noted that the show cause notice was issued by the adjudicating authority based on assumption and presumption without conducting any investigation and enquiry. Furthermore, the assessee was able to satisfy the tribunal by producing records and pointing out as to how the inter unit transfer had taken place which fact had been admitted by the adjudicating authority.

Thus, for the above reason, we find that the revenue has not made out any ground to interfere with the order passed by the tribunal. Accordingly, the appeal fails and is dismissed. In the result, the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./S.Das.