IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-6157-2021 (O&M)
Date of Decision:-28.02.2023

Suraj Innovative Tehnologies ....Petitioner

Vs.

Commissioner, GST and Central Excise, Chd and anr. ...Respondents

CORAM:- HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mukul Singla, Advocate
for the petitioner

Mr. Tejinder Joshi, Sr. Standing counsel
For the respondents.

Ritu Bahri, J. (Oral)

The present petition has been filed by the petitioner seeking setting aside of show cause notice dated 24.02.2009 (P-1).

The facts, in brief, are that petitioner is engaged in the business of manufacture of Boring Machines falling under Chapter Heading No. 84302000 of the first schedule to Central Excise Tarrif Act, 1985 and during 2006-2010, the petitioner was registered with the respondent under the Central Excise Act, 1944 (for short 'Act 1944'), vide registration No. AAUFS3733RX001. The petitioner availed Cenvat Credit on inputs as per Act 1944 read with Cenvat Credit Rules, 2004 (for short 'Rules 2004').

During the audit of records of the Petitioner by the audit team of respondent, it was observed on scrutiny of the Balance Sheet and Sales Tax Returns for the year 2006-2008 that the Petitioner had wrongly availed Cenvat credit of Rs. 29,25,766/- on the invoices issued by M/s Elgi Equipment Ltd., Coimbatore which were not in the name of Petitioner but in the name of the General Manager, R.G-I, Singreni Colleries Co. Ltd., Godavarikani P.O. Andhra Pradesh. The Cenvat credit of 29,25,766/ had been taken by the petitioner whereas the goods covered under the invoices were never received in the factory premises of the petitioner. Further, the petitioner had taken Cenvat credit of Rs. 5,40,544/- in respect of the duty paid on the compressors but not received in the factory of the Petitioner. Thus, the Petitioner had taken/availed Cenvat Credit of 34,66,310/- in contravention of Rule 4 and wrongly availed Cenvat Credit had been utilized by the Petitioner for discharging duty liability in contravention of Rule 3(4) in as much as the said compressors were not received in the factory and were not removed as such or after being partially processed. The petitioner was then issued impugned show cause notice dated 24.02.2009 (P-1) to show cause as to why:-

> *"(i) Cenvat Credit of Rs 3466310/- taken in contravention of Rule 4 of the Cenvat Credit Rules, 2004 should not be disallowed to the Noticee under Rule 14 of the Cenvat Credit Rules, 2004;*
>
> *(ii) Penalty under Rule 15 of the Cenvat Credit Rules,2004 should not be imposed on the Noticee for wrong availment of Cenvat Credit.*
>
> *(iii) Duty short paid/not paid by the Noticee to the extent of Rs. 3466310/- through unitization of wrong and inadmissible credit should not be confirmed and recovered from them along with interest under Section 11A, Section 11AA and 11AB of the Central Excise Act, 1944;*
>
> *(iv) Penalty should not be imposed upon the Noticee for under Section 11AC of the Central Excise Act, 1944."*

The petitioner gave its reply dated 03.02.2010 (P-2) in response to the above mentioned show cause notice. The respondent vide letter dated 16.02.2010 (P-3) fixed the matter of hearing on 25/26.02.2010. The petitioner through his counsel then appeared on 26.02.2010 and reiterated the written submissions. Now after a gap of 10 years, the respondent vide letter dated 10.02.2021 (P-4) again fixed the matter for hearing on 19.02.2021. On 13.02.2021 (P-5), petitioner requested the respondent to adjourn the matter as the Petitioner was travelling overseas. The Respondent vide letter dated 15.02.2021 (Annexure P-6) has again fixed the matter for personal hearing on 16.03.2021.

The petitioner is now challenging impugned show cause notice dated 24.02.2009, keeping in view Section 11A which prescribes a detailed procedure regarding issue of Show Cause Notice, opportunity of hearing, filing of reply, passing of order etc. Section 11A has been amended from time to time. Under Section 11A of the Act, prior to 11.05.2001 period was prescribed for issuing show cause notice but no period was prescribed for determining the duty liability i.e., passing Order-in-Original. W.e.f. 11.05.2001 vide Finance Act, 2001, Government inserted Sub-section (2A) in Section 11A whereby it was provided that in all cases where duty has been demanded alleging fraud, collusion or willful mis-statement or supersession of facts, order shall be passed, where it is possible to do so, within a period of one year. Section 11A was substituted by Finance Act. 2011. w.e.f. 08.04.2011. Substantial changes were made in said Section. The period of Issuing Show Cause Notice and determining the liability was kept intact.

Learned counsel for the petitioner has referred to a judgment of Hon'ble the Supreme Court of India in a case of ***State of Punjab vs. Bathinda District Co-op Milk P. Union Ltd, 2007 (217 E.L.TT 325) and division Bench judgment of this Court in a case of M/s GPI Textiles Ltd vs. Union of India and others, 2018-TIOL-1686-HC-P&H-CX (P-7).***

Learned counsel for the petitioner further submits that the above Division Bench judgment of this Court has been followed by this Court vide judgments mentioned below:-

1. ***CWP No. 11990-2020, Mentha and Allied Products vs. Commissioner, Central Goods and Service Tax, Chd.***
2. ***CWP No. 995 & 1043-2021, Hindustan Min and Agro Products Pvt. Ltd vs. Commissioner, Central Goods and Service Tax, Chd.***
3. ***CWP No. 8243-2017, M/s Panacea Biotech Ltd vs. Union of India and anr.***
4. ***CWP No. 20961-2020, Shree Balaji Aromatices Ltd vs. Commissioner, Central Goods and Service Tax, Chd.***

On the other hand, learned counsel for the respondents has referred to reply dated 02.02.2022 and contends that show cause notice was transferred to call book on 24.12.2010 as the similar issue was pending in Hon'ble the Supreme Court in the case of ***Commissioner of Central Excise, Indore vs. M/s Grasim Industries Ltd*** and vide judgment dated 11.05.2018, the case was decided and thus, in the present case, the personal hearing was fixed for 19.02.2021 but on 13.02.2021 (P-5), petitioner requested the respondent to adjourn the matter as the Petitioner was travelling overseas. The Respondent then vide letter dated 15.02.2021 (Annexure P-6) has again fixed the matter for personal hearing on 16.03.2021. Thereafter, the petitioner vide letter dated 15.03.2021, received on 16.03.2021 informed that two separate writ petitions had been filed in the Hon'ble Punjab and Haryana High Court.

Learned counsel for the respondent has further submitted that during the course of audit conducted by the Audit Team of the then Central Excise Commissionerate, Chd, it was noticed that they have shown clearance/sale of goods valued at Rs.5,23,81,250/- during the financial year

2007-08, which was substantially above the SSI exemption limit of Rs.4 crores as provided under notification No 8/2003-CE dated 01.03.2002 as amended. Thus, the petitioner was not entitled for SSI Exemption on first clearance of Rs.1.5 crores in the financial year 2008-09 and was required to discharge the duty from the very first removal of excisable goods from their factory of manufacture. However, the petitioner availed the exemption in respect of first clearance for home consumption of aggregate value of Rs.1.50 crores and had not discharged the applicable Central Excise duty, Education Cess and Secondary and Higher Education Cess Liability amounting to Rs.21.63 lacs (Central Excise duty 14% + Education Cess 2% of 14% + Higher & Secondary Education Cess 1% of 14%)

Reference has further been made to circular dated 26.04.2016 issued by CBEC wherein it has been clarified that where the issue involved either been decided by Hon'ble the Supreme Court or Hon'ble High Court and such order of the Hon'ble High Court has attained finality, such cases shall be taken out of Call Book and adjudicated.

Thus, since the case of the petitioner was kept in call book, as per circular (R-1), the delay of 10 years cannot be taken as a ground to quash the show cause notice dated 24.02.2009 (P-1).

Learned counsel for the petitioner further informed that against the judgment passed ***in M/s Shree Baba Exports's case (supra)***, Special Leave to Appeal (C) No. 12376 of 2022 filed by the revenue has been dismissed by Hon'ble the Supreme Court vide order dated 29.07.2022.

At this stage, learned counsel for the respondents has informed that SLP against the judgment passed in **Siddhi Vinayak Sintex Pvt. Ltd.'s case (supra)** is pending consideration before Hon'ble the Supreme Court.

Learned counsel for the petitioner has not disputed the above said fact, however, he stated that no interim stay has been granted in the appeals, which are pending before Hon'ble the Supreme Court with respect to the matter under challenge.

Issue in the present case is squarely covered in favour of the petitioner keeping in view the judgments referred to above, especially the decision rendered in ***GPI Textiles Ltd.'s case (supra)***. Since, no interim stay has been granted by Hon'ble the Supreme Court in the above mentioned appeals, the present petition is allowed and the impugned show cause notice dated 24.02.2009 (P-1) is set aside.

(RITU BAHRI)
JUDGE

(MANISHA BATRA)
JUDGE

28.02.2023
G Arora

Whether speaking/reasoned *:* Yes/No
Whether reportable *:* Yes/No