Serial No. 4
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.287/2022 with
MC (WPC) No. 139/2022

Date of Order: 19.10.2022

M/s Green Valliey Industries Ltd.	Vs.	Union of India & ors
M/s Green Valliey Industries Ltd.	Vs.	Union of India & ors

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner : Mr. A. Kanodia, Adv with
Ms. M. Agarwal, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. S. Rumthao, Adv

i) Whether approved for reporting in Law journals etc.: Yes

ii) Whether approved for publication in press: Yes/No

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The petitioning assessee relies on a judgment of this Court delivered on May 19, 2022 in WP (C) No.86 of 2022 *(The Commissioner of GST v. Amrit Cement Limited)* to assail an appellate order of July 14, 2021 passed in connection with a show-cause notice dated July 31, 2019.

2. The matter pertains to the transitional period of switching over from the previous sales tax regime to the GST regime. In the discussion in *Amrit Cement Limited*, Section 140 of the Central Goods and Services Tax Act, 2017 fell for consideration and the cenvat credit claimed by the assesse

was allowed in terms of the appellate order upon noticing, inter alia, Rule 117 of the Central Goods and Services Tax Rules, 2017 pertaining to "eligible duties and taxes".

3. On behalf of the Department, it is submitted that the impugned appellate order dealt with the entire claim of Rs.6,86,73,062/- in two parts: the first pertained to the cenvat credit of Rs.6,55,99,154/- and the second pertained to a credit of Rs.30,73,908/- that had been availed through TRAN-1. The Department submits, in particular, that the sum of Rs.30,73,908/- claimed by way of TRAN-1 was completely impermissible and there is no error in the adjudication in such regard reflected at paragraph 11 of the impugned appellate order.

4. As to the remainder of the claim of the cenvat credit of Rs.6,55,99,154/-, the Department does not admit that the petitioning assessee is entitled to the same, but puts forth the same grounds as noticed in *Amrit Cement Limited* to resist such part of the claim. Since the entirety of the Department's argument was recorded in detail in such regard in *Amrit Cement Limited* and repelled, the Department's submission in this case that the cenvat credit limit claimed by the assessee to the extent of Rs.6,55,99,154/- has been rightly negated by the appellate order, cannot be accepted. Accordingly, the petitioner herein is found entitled to the cenvat credit limit of Rs.6,55,99,154/-.

5. As to the claim of Rs.30,73,908/-, paragraph 3.5 of the show-cause notice of July 31, 2019 claimed that out of the total credit of Rs.6,86,73,064/- on account of the reverse charge mechanism availed by the assessee in its return of June, 2017, the admissible credit was Rs.30,73,908/-, which was the payment made by the assessee in June, 2017. The show-cause notice went on to reason that since the refund claim made by the assessee for the month of June, 2017 was to the extent of Rs.2,17,30,566/- and not the balance amount of Rs.30,73,908/- that was also available, in terms of the exemption notification No.20/2007 issued by the Central Excise authorities on April 25, 2007, the assessee was deemed to have abandoned such part of the claim. Indeed, the Department points out that the refund claim of Rs.2,17,30,566/- was honoured and the assessee has no grievance in such regard.

6. Section 140 of the Act of 2017 permits a cenvat credit to be carried forward except in three situations which are expressly indicated in the provision. These three situations are covered by the proviso to the substantive provision. The credit would not be available when it is not admissible as per the input tax credit under the Act or where returns have not been furnished within time or where the amount of credit relates to good manufactured and cleared under any exemption notification as may have been notified.

7. In this case, it is the admitted position that in terms of the exemption notification of April 25, 2007, the entirety of the credit available to an assessee ought to have been availed and the refund claim ought to have been restricted to the additional amount paid in cash, if excise duty was exempted. Thus, on a reading of the relevant notification, it would be apparent that no credit could be carried forward after making a refund claim as the entirety of the credit would have been adjusted in course of making the claim for refund.

8. This is exactly what the appellate authority held at paragraph 11 of the impugned order of July 14, 2021.

9. The appellate authority noticed that the assessee had sought a cash refund of Rs.2,17,30,566/- for the month of June, 2017 and had obtained the same. The appellate authority observed that the mandatory pre-condition of the notification of April 25, 2007 was that "the assessee first exhaust the entire credit available to them and discharge their remaining duty liability by cash and subsequently avail the benefit of exemption by way of refund of the amount paid in cash only pertaining to the period to which the refund relates".

10. Clearly, the petitioning assessee in this case ought to have included in its refund claim of June, 2017, the additional amount of Rs.30,73,908/- which it subsequently sought to carry forward in its TRAN-1. When an exemption is granted, it is to be seen as an exception to the

general rule. Exemptions may be granted hedged with conditions. Since it is a benefit which is specially conferred to a person or a class of persons, the benefit has to be taken with the conditions and not severed therefrom. The benefit of exemption in this case was that the entirety of the credit available would first be adjusted before the balance paid by way of cash and refund sought only of the cash payment. In the assessee not availing of the entirety of the credit due to it on June 30, 2017, it was not entitled to make a further claim in such regard and is deemed in law to have abandoned such available credit.

11. As a consequence, the amount of Rs.30,73,908/- could no longer be carried forward in the TRAN-1 that was submitted at a subsequent stage.

12. There is no doubt that the assessee did not avail of the credit amounting to Rs.30,73,908/- and in equity may be entitled to the same. However, equitable principles do no come into play when it is an exemption provision that is sought to be enforced, particularly when the conditions attached to the exemption are not adhered to.

13. The assessee's claim for the amount of Rs.30,73,908/- cannot be accepted and, to such extent, the show-cause notice and the impugned appellate order are found to be in order and unassailable.

14. However, the assessee submits that since the larger part of the claim has been allowed following the dictum in *Amrit Cement Limited,* the 100 per cent penalty imposed by the Department should also go.

15. There is no doubt that since the larger part of the claim in excess of Rs.6 crore has been upheld in favour of the assessee, the imposition of penalty for the corresponding amount will no longer apply. But the issue now arises as to whether the 100 per cent penalty imposed for the remainder of the claim, to the extent of Rs.30,73,908/-, should also be interfered with.

16. The assessee refers to Sections 73 and 74 of the Act of 2017. The assessee brings out the distinction between Section 73 and the strict applicability of Section 74 when there is an attempt by the assessee to defraud the revenue by making any misrepresentation or by suppression of material facts. The assessee submits that apart from the fact than an amount in excess of Rs.30 lakh would be a loss to the assessee, there was no attempt by the assessee to mislead the Department or suppress any material facts in making the claim for the amount of Rs.30,73,908/- in the TRAN-1 filed by the assessee. The assessee suggests that since it was a huge sum which had been lost to the assessee, the assessee merely invoked the discretion of the Department in allowing the claim at a later stage since the assessee had not availed of it, whether by mistake or oversight, at the time of claiming refund for the month of June, 2017.

17. Though the Department vehemently objects to the conduct of the assessee to not be regarded as fraudulent, in this case, it appears that the assessee has been seriously hurt in losing a sum of Rs.30,73,908/- that it was otherwise legitimately entitled to receive. It is not necessary to go into

the circumstances in which such claim had not been made, once it is evident that if the claim for refund had not being made at the appropriate time, it could not be carried forward. However, nothing in the subsequent act of the assessee in incorporating the amount in TRAN-1 would amount to the element of mens rea on its part that is the underlying essence of Section 74 of the Act of 2017.

18. Since the claim of the assessee to the extent of Rs.6,55,99,154/- has been upheld, no question arises of any penalty or interest or other charge being imposed in respect of such amount. The penalty on the balance amount would not be covered under Section 74 of the Act since there was no attempt to defraud the revenue or mislead it or any suppression of material facts. Indeed, since there is no failure to pay any amount, in the strict sense, in this case as the show-cause notice only pertained to a claim that had been made to which the assessee was not entitled, this would not be an appropriate case for imposing any penalty.

19. Nonetheless, to the extent that the claim was made and the claim could not have been made in terms of the notification of April 25, 2007 in respect of the sum of Rs.30,73,908/-, the interest imposed by the appellate order limited to such sum is not interfered with.

20. If, as a consequence of this order, any money is payable by the assessee to the Department in respect of the matters covered herein, such payment should be made within 30 days from date, failing which the

consequences will follow in accordance with law. It is recorded that the assessee claims that no further payment is required to be made.

21. Accordingly, WP (C) No.287 of 2022 is allowed by setting aside the appellate order dated July 14, 2021 to the extent that it disallowed the petitioning assessee's claim of Rs.6,55,99,154/- and by upholding the appellate order to the extent that it rejected the balance claim of Rs.30,73,908/-. Further, the penalty imposed by the appellate order is set aside in its entirety.

22. MC (WPC) No.139 of 2022 is disposed of.

23. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
19.10.2022
"Lam DR-PS"