

CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Zonal Bench, Ahmedabad

Appeal No. E/575/2010-DB

(Arising out of OIA No. 02/COMMISSIONER/RKS/AHD-I/2010 dated 22/01/2010 passed by Commissioner of Central Excise-AHMEDABAD-I)

Patel Alloys Steel (P) Ltd - **Appellant**

Vs.

C.C.E.-Ahmedabad-I - **Respondent**

Represented by:

For the appellant : Shri P.G. Mehta (Advocate)
For the respondent : Shri L. Patra, Asst. Commr. (AR)

CORAM:

Hon'ble Mr. Ramesh Nair, Member (Judicial)
Hon'ble Mr. Raju, Member (Technical)

Date of Hearing: 30.11.2018

ORDER NO. **A/12861/2018**

Per: Ramesh Nair

The issue involved in the present case is that whether the appellant is entitled for Cenvat Credit in respect of capital goods used in the manufacture of final product on Job Work Basis under notification 214/86 dated 25/03/1986.

2. Shri PG Mehta, Ld. Counsel appearing on behalf of the appellant submits that the goods manufactured under notification 214/86-CE is not considered as exempted goods. Therefore the capital goods on which credit was availed has not been used for manufacture of exempted goods. Therefore, the credit cannot be denied. He submits that same issue has been decided in their favour in their own case and in various other judgments. He placed reliance on the following judgments:

- (a) Sterlite Industries (I) Limited vs. CCE, Pune – 2005 (183) ELT 353 (Tri. LB)
- (b) Sanshu Industries vs. CCE, Aurangabad – 2007 (220) ELT 481 (Tri. Mum.)
- (c) Kyungshin Industrial Motherson Limited vs. CCE, Chennai – 2007 (216) ELT 719 (Tri. Chennai)
- (d) Arvind Mills Limited vs. CCE, Ahmedabad – 2005 (182) ELT 362 (Tri. Mumbai)
- (e) CCE, Vadodara vs. Gujarat Propack – 2009 (234) ELT 409 (Guj).
- (f) CCE, Goa vs. Rudra Industries – 2007 (219) ELT 466 (Tri. Mum.)
- (g) This Tribunal order Nos. A/872/WZB/AHD/2011 dated 08.4.2011, A/699/WZB/AHD/2011 dated 11.02.2011/ 28.04.2011, A/943/WZB/AHD/2011 dated 02.05.2011 and A/1189-1190/WZB/AHD/2011 dated 21.06.2011 in the appellant's own case.

3. Shri L. Patra, Ld. Asst. Commr. (AR) appearing on behalf of the Revenue reiterated the findings of the impugned order. He heavily relied on the following judgments:

- (a) Andhra Polymers P. Ltd vs. CCE, Hyderabad-II – 2016 (332) ELT 831 (Tri. Bang.)
- (b) Arisht Spinning Mills vs. CCE, Chandigarh – 2010 (261) ELT 417 (Tri. Del.)
- (c) CCE, Indore vs. Surya Roshni Limited – 2003 (155) ELT 481 (Tri. Del.)
- (d) Surya Roshni Limited vs. Commissioner – 2003 (158) ELT A273 (SC)
- (e) Spenta International Limited vs. CCE, Thane – 2007(216) ELT 133 (Tri. LB.)
- (f) UOI vs. Ind-Swift Laboratories Limited – 2012 (25) STR 184 (SC)

4. On careful consideration of the submission made by both the sides and perusal of the record, we find that in all the judgments cited by the Ld. Counsel, the similar issue was involved that whether the capital goods credit is admissible when the capital goods is used for manufacture of goods exempted under notification 214/86-CE. On perusal of all the judgment, we find that it has been consistently held that the goods

manufactured under notification no. 214/86-CE is not considered as exempted goods as liability to discharge Excise Duty on such Job work goods lies on the principle. As regard the judgments cited by the Ld. AR, we find that none of the judgments is on this issue of notification no. 214/86-CE. Therefore, ratio of those judgments are not applicable in the facts of the present case. As per our above discussion, the impugned order is set aside, appeal is allowed.

(Dictated and pronounced in the open Court)

(Raju)

Member (Technical)

DS

(Ramesh Nair)

Member (Judicial)