CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.I

Excise Appeal No.71069 of 2018

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-1877-17-18 dated 21/03/2018 passed by Commissioner (Appeals) Central Excise & CGST, NOIDA)

M/s Merino Industries Ltd., **.....Appellant**
(Village-Achheja, PO-Hapur-245101, Dist.Ghaziabad)

VERSUS

Commissioner of Central Excise &

CGST, Noida **....Respondent**

(Commissionerate, Noida)

APPEARANCE:

Shri S. Sunil, Advocate for the Appellant
Shri Manish Raj, Authorised Representative for the Respondent

CORAM: **HON'BLE MR. SANJIV SRIVASTAVA, MEMBER (TECHNICAL)**

FINAL ORDER NO. 70142/2024

DATE OF HEARING & DECISION : 07 March, 2024

SANJIV SRIVASTAVA:

This appeal is directed against order in appeal No NOIDA-EXCUS-001-APP-1877-17-18 dated 21/03/2018 of Commissioner (Appeals) Central Excise & CGST, NOIDA. By the impugned order Commissioner (Appeal) has upheld the order in original No 161 (98/2016)ADJ/DC/HPR/2016 dated 29.07.2016. By which following was held:

ORDER

(i) I allow the credit of Rs 1,72,541/- (Rupee One Lacs Seventy Two Thousand Five Hundred and Forty Only only) availed on Tubes and Pipes and I disallow the Cenvat Credit amounting to Rs 64,912/- (Rupees Sixty Four Thousand Nine Hundred and Twelve Only) wrongly availed and utilized on Sheets, Plates, Screws & Channel by M/s Merino Industries Ltd., Village- Achheja, Delhi Road Hapur, Distt Hapur and order for recovery of the same for them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004, read with Section 11 A (1) of the Central Excise Act, 1944.

(ii) I also confirm the demand of appropriate interest on the above said amount of wrongly availed Cenvat Credit and order for the recovery of the same from M/s Merino Industries Ltd., Village- Achheja, Delhi Road Hapur, Distt Hapur and order for recovery of the same for them under the provisions of Rule 14 of the CENVAT Credit Rules, 2004, read with Section 11 AA of the Central Excise Act, 1944.

(iii) I impose a penalty of Rs 64,912/- (Rupees Sixty Four Thousand Nine Hundred and Twelve Only) upon M/s Merino Industries Ltd., Village-Achheja, Delhi Road Hapur, Distt Hapur and order for recovery of the same for them under the provisions of Rule 15 of the CENVAT Credit Rules, 2004, read with Section 11 AC OF THE Central Excise Act, 1944.

2.1 The impugned order was challenged by this appeal.

2.2 This appeal has earlier been allowed as per Final Order No.70554 of 2019 dated 15.03.2019, albeit certain inadvertent errors crept in the order.

2.3 Applicant filed the application for rectification of mistake as per Section 35C (2) of the Central Excise Act, 1944.

2.4 The Rectification of Mistake Application was allowed vide Miscellaneous Order Nos.70006-70008 of 2023 dated 24.07.2023 and the matter was listed for hearing.

3.1 Heard both sides and perused the records.

4.1 From the order in original referred in para 1, above it is quite evident that the amount of credit disallowed was Rs 64,912/- (Rupees Sixty Four Thousand Nine Hundred and Twelve Only) and penalty of an equivalent amount was imposed by the adjudicating authority and has been upheld by the impugned order.

4.2 In para 2 while recording the facts in Final Order No.70554 of 2019 dated 15.03.2019 following was recorded:

> "Cenvat credit of Rs.61,828/- stands denied to the appellant for the period from April, 2015 to November, 2015, by way of issuance of show cause notice dated 01.04.2016 on the ground that various iron and steel items like M.S. Pipes, HS Pipes & tube, Channels, MS Angles, Plats, Section etc. used in repair and maintenance of the capital goods within the factory, cannot be considered to be Cenvatable inputs."

From the reading of the order in original reproduced above it is evident that the amount of credit in dispute before the tribunal was Rs 64,912/- and not Rs 61,828/ as recorded in the Final Order No 70554/2019 dated 15.03.2019.

4.3 On the merits of the case I am of the view that issue is no longer res-integra as has been held in the earlier order of tribunal.

4.4 In view of the above Final Order No.70554 of 2019 dated 15.03.2019 is modified to the extent of substituting the para 2 as follows:

> "Cenvat credit of Rs.64,912/- stands denied to the appellant for the period from April, 2015 to November, 2015, by way of issuance of show cause notice dated 01.04.2016 on the ground that various iron and steel items like M.S. Pipes, HS Pipes & tube, Channels, MS Angles, Plats, Section etc. used in repair and maintenance of the capital goods within the factory, cannot be considered to be Cenvatable inputs."

5.1 Appeal is disposed of modifying the Final Order No 70554/2019 dated 15.03.2019 in the manner as indicated in para 4.4 above.

(Dictated and pronounced in open court)

Sd/-
(SANJIV SRIVASTAVA)
MEMBER (TECHNICAL)

akp