CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT NO.II

Excise Appeal No.70048 of 2018

(Arising out of Order-in-Appeal No. NOI-EXCUS-002-APPL-1228-17-18, dated -29/09/2017 passed by Commissioner (Appeals) Central Tax, Noida)

M/s Anamika Sugar Mills Pvt. Ltd. .....Appellant
(Village Bhandoria, P.O. Aurangabad
Bulandsheshar, U.P. 203001)

VERSUS

Commissioner of Central GST & Central Excise, Gautam Budh Nagar ....Respondent
(3rd Floor, Wegmens Business Park,
K.P.-III, Greater Noida)

WITH

Excise Appeal No.70913 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-002-APPL-1801-17-18, dated - 28/02/2018 passed by Commissioner (Appeals) Central Tax, Noida)

M/s Anamika Sugar Mills Pvt. Ltd. .....Appellant
(Village Bhandoria, P.O. Aurangabad
Bulandsheshar, U.P. 203001)

VERSUS

Commissioner of Central GST & Central Excise, Gautam Budh Nagar ....Respondent
(C-56/42, Sector-62 Noida, U.P.)

APPEARANCE:

Ms. Ushmeet Kaur Monga, Advocate & Shri Atul Gupta, Advocate for the Appellant
Shri Manish Raj, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NOs.-70542-70543/2024

DATE OF HEARING : 29.08.2024
DATE OF DECISION : 30.08.2024

S. S. GARG:

These two Appeals being Excise Appeal No.70048 & 70913 of 2018 are directed against the impugned orders dated 29.09.2017 & 28.02.2018 passed by the Commissioner (Appeals) whereby the Commissioner (Appeals) has upheld the Order-In-Original and confirmed the demand of Rs.18,25,939/- and Rs.2,83,182/- under Rule 14 of the Cenvat Credit Rules read with Section 11AA of the Central Excise Act, 1944 along with equal penalty.

2. Since the issue involved in both the appeals is identical, therefore, both the appeals are taken up together for discussion and disposal. For the sake of convenience the fact of the Excise Appeal No.70048 of 2018 are taken up.

3. Briefly the facts of the present case are that the Appellant is engaged in the manufacture of V.P. Sugar and Molasses falling under Chapter No.17 of the Central Excise Tariff Act, 1985. Vide letter dated 16.11.2015 the Department asked the Appellant to submit a details of Cenvat Credit taken up by them on Welding Electrodes and other goods falling under Chapter 72 & 73 of the Central Excise Tariff Act, 1985. Thereafter vide letter dated 04.12.2015 the Appellant provided a requisite details. Thereafter statement of demand under Section 11A(7A) of the Central Excise Act, 1944 was issued to the Appellant proposing to recover Rs.18,25,939/- under Rule 14 of the Cenvat Credit Rules read with Section 11A of the Central Excise Act, 1944. Thereafter following the due process the Original Authority vide its order dated 29.02.2016 confirmed the demand alongwith interest and penalty in respect of Cenvat Credit availed on welding electrodes, steel plates, HR plates, HR Coils, Shape & Section, Channel & Beam of Chapter 72 & 83 of the Central Excise Tariff Act. Aggrieved by the said order, Appellant filed the appeal before the Commissioner (Appeals) who vide the impugned order upheld the Order-In-Original in full. Hence the present appeal.

4. Heard both sides and perused the material facts on record.

5. Learned counsel for the Appellant submits that the impugned orders are not sustainable as the same has been passed without properly appreciating the fact and binding judicial decisions on the same issue. She further submits that while confirming the demand in the impugned order there is no finding on the submission how the goods in question were used by the Appellant. She further submits that the said finding is based on the general allegation. Learned Commissioner has relied upon the judgement of the Larger Bench of the Tribunal in the case of **Vandana Global V/s CCE, 2010 (253) ELT 440 (Tri.-LB)** wherein it was held that Cenvat Credit on inputs used in fabrication of structure/foundation and for building support structure is not admissible.

6. The learned Counsel further submits that the said decision of the Larger Bench of the Tribunal has been set aside by the parent High Court i.e. Hon'ble Chhattisgarh High Court in **TAXC No.59 of 2011 (Vandana Global Ltd. V/s Commissioner of Central Excise & Cutoms)** wherein agreeing with the decision of the Hon'ble Gujarat High Court in the case of **Mundra Ports & Special Economic Zone Ltd. V/s CCE & Cus reported at 2015 (39) S.T.R. 726 (Guj.)**, the Hon'ble Court set aside the decision of the larger bench of the Tribunal. The learned counsel further submits that the impugned order has been passed primarily relying on the decision in the case of Vandana Global (sited supra) and the said decision has been held not a good law by the Higher Forum then the impugned order is also not sustainable as held in the following decisions:-

a. Comm. of CE, Bolpur vs. Soumya Alloy Industries Ltd. 2016 (333) ELT 64 (Cal.)

b. Comm. of C.EX., Lucknow vs. Mankapur Chini Mills 2019 (367) ELT 889 (All.)

c. Comm. of C.EX., Lucknow vs. DSCL Sugar 2019 (367) ELT 836 (All.)

d. Simbhaoli Sugar Ltd. vs. Commissioner of Central Excise, Meerut -II 2016 (335) ELT 328 (Tri-All.)

7. Learned counsel further submits that the Appellant is entitled to avail Cenvat Credit on various steel items which have been utilized for fabrication of plant and machinery which is ultimately used in the manufacture of finished excisable goods, it shall be considered as an input under Rule 2(k) of the Cenvat Credit Rules, 2004. This view has been held in the following judgments:-

a. Principal Comm. of CE & ST, Commissionerate, Ludhiana vs. IOL Chemicals and Pharmaceuticals Ltd. 2023 (385) ELT 705 (P&H)

b. U.G. Sugar & Indus Ltd. v. CCE, Meerut-11, 2017(347) E.L.T. 491 (Tri-All)

c. Singhal Enterprises Pvt. Ltd. vs. Comm. of Cus. & C. Ex., Raipur

2016 (341) ELT 372 affirmed CCE & ST, Bilaspur v. Singhal Enterprises Pvt. Ltd., 2018 (359) E.L.T. 313 (Chandigarh)

d. Merino Industries Ltd. vs. Commissioner CE, Noida 2021 (378) ELT 335-CESTAT Allahabad

e. Kisan Sahkari Chini Mills Ltd. v. CCE, Meerut-11,2017(352) E.L.T. 215 (Tri-All)

f. Ambuja Cements Eastern Ltd. vs. Comm. of C.Ex., Raipur 2010 (256) ELT 690 (Chattisgrah)

8. Learned counsel further submits that the question of interest and penalty does not arise when the demand itself is not sustainable. She also submits that extended period cannot be invoked on the basis of audit objection.

9. Learned Departmental Representative has reiterated the impugned order.

10 After considering the submissions of both the parties and on perusal of records, I find that the only issue in the present appeals is whether Cenvat credit availed on inputs such as HR Plates, Shape & Section, Channels under Tariff Chapter No.72 & 73 and Welding Electrode under Tariff Heading No.8311 would be admissible or not. Further I find that in the impugned order demand has been confirmed only on the basis of the Larger Bench decision in the case of Vandana Global (cited supra) which is no longer a correct law and which has been set aside by the Hon'ble High Court in the decisions cited supra by the Appellant. Further, I find that this issue is no more *res integra* and it has been consistently held by the High Court that the decision of the Larger Bench in Vandana Global is not a good law and once the decision in the case of Vandana Global has been held to be not a good law, therefore, I hold that the Appellant is entitled to avail the Cenvat Credit on various steel items and welding electrodes.

11. As held in catena of decisions cited supra and by following the ratio of decisions cited above, I hold that the impugned orders are not sustainable, therefore, I set aside the impugned orders by allowing both the appeals with consequential relief if any, as per law.

(Pronounced in open court on 30.08.2024)

(S. S. GARG)
MEMBER (JUDICIAL)

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