IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No. E/70732/2016-EX[SM]

(Arising out of Order-in-Appeal No. GZB-EXCUS-000-APP-0390-15-16 dated 30/03/20160 passed by Commissioner of Central Excise & Customs (Appeals), Noida)

Commissioner of Central Excise &

Service Tax, Ghaziabad **Appellant**

Vs.

M/s Bhushan Steel Ltd. **Respondent**

Appearance:

Shri Pawan Kumar Singh (Supdt.) AR for Appellant
Request for Adjournment for Respondent

CORAM:

Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Date of Hearing : 24/10/2018
Date of Decision : 24/10/2018

FINAL ORDER NO **72470 / 2018**

Per: Archana Wadhwa

After rejecting the request for adjournment made by the learned counsel for the respondent, I proceed to decide the Revenue's appeal inasmuch as a short issue covered by the earlier decision of the Tribunal in the same assessee's case is involved.

2. After hearing learned AR, I find that the respondents are engaged in the manufacture of Precision Pipes/Tubes falling under Chapter 73 of the Central Excise Tariff Act. The same

was being cleared by the respondent to their depots on payment of duty. At depots such goods were being sold after cutting the same and as per the requirement of their customers. The remanant pipes were being sent back by the depots on the basis of the invoices by showing the duty payment on the same and as such duty payment by the depots was being availed as credit by the respondents.

3. Revenue's only grievance that such remanant pipes emerging at the depots end were of lesser value than the value of regular pipes and as such lesser duty should have been paid by the depots, in which case lesser credit would be available to the respondents. Commissioner (Appeals) has not accepted the above stand of the Revenue and by following the precedent decision of the Tribunal in the same assessee's case, he set aside the demand.

Another part of the demand which stands set aside by the Commissioner (Appeals) is in respect of denial of Cenvat Credit on welding electrodes used in the factory for repair and maintenance of capital goods/machinery. Here also he has relied upon the earlier decision of the Tribunal in the same assessee's case and has set aside the demand.

Hence, the present appeal filed by the Revenue.

4. As regards the first issue I find that the Appellate Authority has held in the favour of the respondent by observing as under:-

"(a) The first part is of denial of cenvat credit availed on end cuttings/scrap of precision pipes/tubes generated at depots. The relevant portions of the Hon'ble CESTAT's final order No. A/51598/2015 dated 07.05.2015, passed in the appellant's case for previous period, reads as under,-

> *"11. As regards the Cenvat credit demand of Rs.1,20,48,313/- in respect of end cuttings of pipes received dealer invoices, we find that the various depots had transferred the end-cuttings of pipes under invoices wherein the proportionate duty paid on the pipes at the time of clearance from their respective factories had been mentioned. The Department seeks to re-calculate this duty on the basis of the scrap value of the end cuttings, as mentioned in the depot invoices and restrict the Cenvat credit to that amount. In our view this stand of the Department is not correct in view of the Apex court's judgment in the case of Commissioner of Central Excise & Customs vs. MDS Switchgear Ltd. reported 2008(229) E.L.T. 485 (S C), wherein it has been held that the receiver manufacturer who had received the duty paid inputs from a supplier – manufacturer is entitled to Cenvat credit of the duty paid by the supplier manufacturer and the Central Excise Authorities having jurisdiction for the recipient manufacturer cannot review the assessment of the duty at the end of the supplier manufacturer. In view of this the Cenvat Credit demand of Rs.1,20,48,313/- is also without basis."*

I find that the matter of admissibility of cenvat credit on end cuttings/scrap of precision pipes/tubes generated at depots has been settled in the favour of the appellant vide final order No. A/51598/2015 dated 07.05.2015, extracted above. In the given circumstances, I hold that the original order is not sustainable as far as denial of cenvat credit on end cuttings/scrap of precision pipes/tubes is concerned. The questions of application of interest and penal provisions are rendered redundant in the event of admissibility of cenvat credit."

5. Revenue is not denying the fact that the issue is covered by the earlier order of the Tribunal in the same assessee's case but submits the view adopted by the Tribunal is not correct. I note that the issue stands decided by the Tribunal by relying upon the earlier Hon'ble Supreme Court's order. As long as the Tribunal's order has not been set aside by the higher Appellate Forum, the same holds the field. As such I find no infirmity in the impugned order of Commissioner (Appeals).

6. As regards second part of the order relatable to availability of Cenvat Credit on welding electrodes, I find that the issue is covered by various decisions of the High Courts. Suffice it to say that the Appellate Authority was justified in following the earlier order of the Tribunal being Order No. A/50138/2015 dated 20 January, 2015 in the assessee's own case and no infirmity can be found in the same.

7. In view of the above, I find no reason to interfere in the impugned order. Revenue's appeal is accordingly, rejected.

(Dictated and pronounced in Court)

Sd/-
(Archana Wadhwa)
Member (Judicial)

Ankit