CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
<u>ALLAHABAD</u>

REGIONAL BENCH – COURT NO.I

Excise Appeal No. 71352 of 2018-[SM]

(Arising out of Order-in-Appeal No.NOIDA-EXCUS-001-APP-1878-17-18 dated 21/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

Merino Industries Ltd. **.....Appellant**

VERSUS

Commissioner of Central Excise, Noida **.....Respondent**

<u>APPEARANCE:</u>

Written Submission, for Appellant
Shri Shiv Pratap Singh, Authorized Representative for Respondent

CORAM :
Hon'ble MR. ARCHANA WADHWA, MEMBER (JUDICIAL)

DATE OF HEARING : 14.03.2019
DATE OF DECISION : 11/04/2019

FINAL ORDER NO. **<u>70789 / 2019</u>**

ARCHANA WADHWA

A very short issue is involved in the present appeal. Accordingly, I have heard learned A.R. appearing for the revenue and have gone through the impugned orders.

2. The short issue involved is as to whether the Welding electrodes used for repair and maintenance in the assessee's factory are Cenvatable inputs or not. Though, the various decisions of the High Courts have held such use of welding electrodes as entitled to be covered by the definition of the inputs, the lower authorities have denied

the benefit on the ground that repair and maintenance of the plant and machinery is not covered by the definition of manufacture and as such welding electrodes used for repair and maintenance could not be held to be Cenvatable.

3. Tribunal's decision in the case of M/s DSM Sugar Vs Commissioner of Central Excise, Meerut-II reported as 2017 (346) ELT 407 (Tri.-Del.) took note of various decisions of Hon'ble High Courts like M/s Ambuja Cements Eastern Ltd. Vs Commissioner reported as 2010 (256) ELT 690 (Chhattisgarh), Commissioner Vs Alfred Herbert (I) Ltd. reported as 2010 (257) ELT 29 (Kar) and Hindustan Zinc Ltd. Vs Union of India reported as 2008 (228) ELT 517 (Raj.) and held that such use of welding electrodes cannot be denied the benefit of Cenvat credit. Though the period involved in the present appeal is subsequent to 01.04.2011 when the definition of inputs underwent change but I note that even after the amendment, the goods used in the manufacture of the final products are Cenvatable. Admittedly, repair and maintenance of plant and machinery is one of the activities which are related to the manufacture of final product. Inasmuch as, without the said activity, the manufacturing process cannot be continued, it has to be held that the welding electrodes used for repair and maintenance of plant and machinery are Cenvatable.

4. In view of the above, impugned order is set aside and appeal is allowed with consequential relief.

(Order Pronounced in the open Court on 11.04.2019)

Sd/-
(Archana Wadhwa)
Member (Judicial)

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