CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH – COURT NO.I

Excise Appeal No. 71351 of 2018

(Arising out of Order-in-Appeal No.NOI-EXCUS-001-APP-1879-17-18 dated 21/03/2018 passed by Commissioner (Appeals), Central Tax, Noida)

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

VERSUS

Commissioner of Central Excise (Appeals), Noida

.....Respondent

address

APPEARANCE:

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

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

DATE OF HEARING : 11.03.2019
DATE OF DECISION :

FINAL ORDER NO.**70886 / 2019**

ARCHANA WADHWA

The short issue involved in the present appeal is as to whether the various 'Iron & Steel' items used for repair and maintenance of the plant and machinery would be eligible for Cenvat Credit of duty paid on them. The Lower Authorities have denied the credit by relying upon the Hon'ble Andhra Pradesh High Court decision in the case of Shree Rayalaseema Hi-Strength Hypo Limited V/s CCE Tirupati reported as 2012 (278) E.L.T. 167 (A.P.).

2. The appellant in their Memo of appeal has referred to the Tribunal decision in the case of M/s Panipat Co-

operative Sugar Mills Ltd. V/s Commissioner of Central Excise, Rohtak reported as 2013 (293) E.L.T. 66 (Tri.-Del.), wherein after considering the entire decisions of the various High Courts, it was observed as under:-

> *"3. Ms. Rashi Sureka, Advocate, ld. Counsel for the appellant pleaded that the items, in question, have been used for repair and maintenance of the plant and machinery of the plant and same are eligible for cenvat credit in view of the judgements of Hon'ble Chhattisgarh High Court in case of Ambuja Cements. Eastern Ltd. V/s CCE, Raipur reported in 2010 (256) E.L.T. 690 (Chhatt.) and judgement of Hon'ble Karnataka High Court in the case of Alfred Herbert (India) Ltd. reported in 2010 (257) E.L.T. 29 (Kar); and Hon'ble Rajasthan High Court in case of Hindustan Zinc Ltd. v Union of India reported in 2008 (228) E.L.T. 517 (Raj.). She, therefore, pleaded that the impugned order upholding the cenvat credit demand in respect of the items used for repair and maintenance of plant and machinery is not sustainable.*
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> *4. Ms. Shweta Bector, ld. DR defended the impugned order reiterating the finding of the Commissioner (Appeals) and citing the judgement of Hon'ble A.P. High Court in the case of Sree Rayalaseema Hi-Strength Hypo Ltd. v. C.C. & C.E., Tirupati reported in 2012 (278) E.L.T. 167 (A.P.) pleaded that items, in question, are not eligible for cenvat credit an as such there is no infirmity in the impugned order.*
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> *5. I have considered the submissions from both the sides and persued the records. The appellant in course of proceedings before the Deputy Commissioner as well as Commissioner (Appeals) pleaded that during the operation of sugar mill certain parts and components of the machinery get worn out and to replace the same, the new components have to be fabricated by using the steel items. On going through the impugned Order-in-Appeal, I find that the Commissioner (Appeals) has not disputed the usage of the M.S. Angles, Channels, Plates, H.R. Sheet, etc. The Commissioner (Appeals) has, however, simply relied upon the judgement of Larger Bench of the Tribunal in the case of Vandana Global v. CCE, Raipur reported in 2010 (253) E.L.T. 440 (Tri.-LB) and has upheld the Deputy Commissioner's order. In my view when the fact that the items, in question, have been used for repair and maintenance of the plant and*

> *machinery, that is, for fabrication of the parts of machinery which had got worn out and have to be replaced, in not disputed, in view of the judgements of three High Courts Hon'ble Chhattisgarh High Court, Hon'ble Rajasthan High Court and Hon'ble Karnataka High Court, as mentioned above, the inputs used for repair and maintenance of machinery would be eligible for Cenvat Credit. Though in a recent judgement in case of Sree Rayalaseema Hi-Strength Hypo Ltd. v. C.C. & C.E., Tirupati (supra) Hon'ble A.P. High Court has taken a different view holding that welding electrodes used for repair and maintenance are not eligible for cenvat credit as the activity of repair and maintenance is distinct from manufacture, in my view when three High Courts as mentioned above have held that the items used for repair and maintenance of plant and machinery are eligible for Cenvat credit it is this view which has to be adopted. Moreover, for permitting cenvat credit what is relevant is as to whether the use of the item has nexus with manufacture and whether without that item manufactur is commercially possible. Since repair and maintenance is an activity which is essential for smooth manufacturing operations and without regular repair and maintenance, manufacturing activities is not commercially feasible, the inputs used for repair and maintenance of the plant would be eligible for cenvat credit. I, therefore, hold that the impugned order disallowing the cenvat credit is not sustainable. The same is set aside. The appeal is allowed."*

3. Inasmuch as the issue stands discussed and held in favour of the appellant by following the said decision, I set aside the impugned order and allow the appeal with consequential relief to the appellants.

(Order Pronounced in the open Court on 23/04/2019)

(Archana Wadhwa)
Member (Judicial)

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