CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL ALLAHABAD

EXCISE APPEAL NO. 70157 OF 2019

(Arising out of Order-in-Appeal No. IND-EXCUS-001-1682- 17-18 dated 16.02.2018 passed by the Commissioner (Appeals) Central Tax Commissionerate, NOIDA)

Merino Industries Ltd. **.....Appellant**
Village- Achheja, PO- Hapur-245
101, District Ghaziabad
Uttar Pradesh

VERSUS

Commissioner Central Excise, NOIDA **.....Respondent**
C-56/42, Section 62,
NOIDA (UP)

APPEARANCE:

Shri Sunil, Advocate for the Appellant
Shri T.M. Siddigui, Authorised Representative for the Respondent

CORAM : HON'BLE MR. JUSTICE DILIP GUPTA, PRESIDENT
HON'BLE MR. P.V. SUBBA RAO, MEMBER (TECHNICAL)

DATE OF HEARING: 24.03.2021
DATE OF DECISION: 25.05.2021

FINAL ORDER NO.70179/2021

P. Venkata Subba Rao:

This appeal seeks the quashing of the order dated 16.02.2018 passed by the Commissioner (Appeals) CGST & Central Excise, NOIDA[1].

2. The appellant is a manufacturer of paper based decorative laminates, synthetic resin, formaldehyde and other products. It had availed CENVAT Credit on the welding electrodes used in the maintenance of its plant and machinery. Show Cause Notices were issued and orders in original were passed denying the CENVAT credit so taken on the ground that the welding electrodes used in the maintenance of plant and machinery cannot be called as inputs used in

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1 . Impugned order

the manufacture of their final products. Penalties were also imposed on the appellant for wrongly availing the CENVAT credit.

3. The Commissioner (Appeals) had, by the impugned order dismissed two appeals filed by the appellant as follows and upheld the Orders in Original:

	Appeal no. and date	OIO No. and date	Period involved	Amount of CENVAT Credit denied	Penalty imposed
1	151-CE/Appl1 MRT/HPR/2017 dated 17-4-2017	06/Suptd/R-II/HPR/2016-17 dated 22.2.2017	April 2015 to November 2015	Rs. 44,781	Rs. 44,781
2	234-CE/Appl I MRT/HPR/2017 dated 3.5.2017	361(92/2014) ADJ/DC/HPR/2016-2017/949 dated 7.3.2017	2008-09 to 2012-13	Rs. 74,710	Rs.74,710

4. Learned counsel submits that aggrieved by the impugned order, two appeals were filed with respect to the two Orders in original mentioned above. Against S.No. 1 of the above table, Excise Appeal no. 71352 of 2018 was filed and the appeal was allowed by Final Order No. 70789/2019 dated 11.4.2019. This appeal is against the order at S.No.2 of the above table. He prays that this may also be allowed accordingly.

5. Learned Authorized Representative of the department supports the impugned order and prays that it may be upheld.

6. We have considered the arguments advanced from both the sides and have perused the records. We find that appeal at S.No. 1 of the table has already been decided in favour of the assessee by Final Order No. 70789 of 2019, the relevant extract of which is as follows:

> “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."

7. We find that although the period mentioned at S.No. 2 in the table in paragraph 1 above is 2008-09 to 2012-13, a perusal of the SCN shows that the actual period in respect of the disputed CENVAT is April 2013 to March 2014. The period is significant since the definition of 'input' under CENVAT Credit Rules, 2004 was changed with effect from 1.3.2011 and this amended definition is relevant for the period of dispute.

8. After 1-3-2011, Rule 2(k) of the Cenvat Credit Rules, 2004 reads as follows:

"(k**)"input" means-**
(i) **All goods used in the factory by the manufacturer of the final product**; or
(ii) Any goods including accessories, cleared along with the final product the value of which is included in the value of the final product and goods used for providing free warranty of final products; or
(iii) …
(iv) …."

9. There is no dispute that the welding electrodes were used in the factory of the manufacturer as they were used to maintain the machinery. Therefore, they are squarely covered by the definition of 'input' under Rule 2(k) above. Unlike the definition of input prior to 1.3.2011, for something to qualify as an input, it need not be used in or in relation to manufacture of the final product but it only needs to be used within the factory of the manufacturer. There is no dispute that the welding electrodes have been so used. CENVAT credit can therefore, not be denied. Consequently, the penalty also cannot be imposed.

10. Thus, for the reasons stated above, the impugned order dated 16.02.2018 passed by the Commissioner (Appeals) denying the CENVAT credit and upholding the penalty is contrary to law and cannot be sustained.

11. The impugned order is, accordingly, set aside and the appeal is allowed with consequential relief, if any.

(Order Pronounced on 25.05.2021)

(JUSTICE DILIP GUPTA)
PRESIDENT

(P.V. SUBBA RAO)
MEMBER (TECHNICAL)

Pk/Shreya