CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 20805 of 2017

(Arising out of Order-in-Original No. BEL/EXCUS/000/COM/BKK/053/16-17(CX) dt. 22/02/2017 passed by Commissioner Of Central Tax, Belgaum)

Agarwal Sponge & Energy Pvt. Ltd.,
Survey No.899B, Haraginadhoni Road,
Veniveerapura Cross,
Kudithini Village,
Bellary. KA

Appellant(s)

VERSUS

Commissioner of Central Excise,
CR Building, No.71, Club Road,
Belgaum 590 001.

Respondent(s)

AND

Excise Appeal No. 21096 of 2018

(Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-047-2018-19 dated 30/04/2018 passed by Commissioner Of Central Tax(Appeals), Belgaum)

Agarwal Sponge & Energy Pvt. Ltd.,
Survey No.899B, Haraginadhoni Road,
Veniveerapura Cross,
Kudithini Village,
Bellary. KA

Appellant(s)

VERSUS

Commissioner of Central Excise,
CR Building, No.71, Club Road,
Belgaum 590 001.

Respondent(s)

WITH

Excise Appeal No. 20758 of 2019

Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-376-2018-19 dated 20/03/2019 passed by Commissioner Of Central Tax(Appeals), Belgaum)

Agarwal Sponge & Energy Pvt. Ltd.,
Survey No.899B, Haraginadhoni Road,
Veniveerapura Cross,
Kudithini Village,
Bellary. KA

Appellant(s)

VERSUS

Commissioner of Central Excise,
CR Building, No.71, Club Road,
Belgaum 590 001.

Respondent(s)

APPEARANCE:
Shri Raghavendra B. Hanjeer, Advocate for the appellant.
Shri Dyamappa Airani, Deputy Commissioner(AR) for the respondent.

CORAM:
HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mrs. R. BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20524-20526 / 2023

Date of Hearing: 07/06/2023
Date of Decision: 07/06/2023

Per : DR. D.M.MISRA

These three appeals are filed against respective impugned orders passed by lower authorities. Since the issue involved in all the appeals is common, these appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of sponge iron falling under Chapter 72 of the CETA, 1985. During the course of manufacture of sponge iron, waste heat is generated which is ultimately used in the factory for generation of electricity. The electricity so generated consumed captively and portion of it also cleared outside the factory. Show-cause notices were issued alleging violation of Rule 6(1) of Cenvat Credit Rules, 2004 (CCR, 2004) since the inputs and input services were used for manufacture of both dutiable as well as exempted products, for recovery of 6% of the value of the clearance of finished goods under Rule 6(3) of CCR, 2004. On adjudication, the demands were confirmed. Aggrieved by the said order, the appellant filed appeals before the Commissioner(Appeals), who in-turn, upheld the Orders-in-original. Hence the present appeals.

3. At the outset, the learned counsel for the appellant submits that the issue is no more res integra and covered by the judgment of this Tribunal in the case of Trimula Industries Ltd. Vs. Commissioner of CGST, CE&C, Bhopal [Final Order No.51863/2019 dt. 26/04/2019, passed by Principal Bench of Tribunal at New Delhi]. The Tribunal following the judgment of the Hon’ble Supreme Court in the

case of UOI Vs. Hindustan Zinc Ltd. [2014(303) ELT (SC)], the Tribunal at para 5 categorically held that the waste heat generated during the course of manufacture of final product which in turn used in the manufacture of electricity cannot be subjected to Rule 6(2) of the CCR, 2004.

4. Learned AR for the Revenue reiterates the findings of the lower authorities.

5. Heard both sides and perused the records.

6. The issue for determination is: whether the electricity generated out of waste heat emerges during the course of manufacture of sponge iron, can be subjected to Rule 6(2) of CCR, 2004?. The said issue was examined by the Tribunal in the case of Trimula Industries Ltd.'s case (supra). It is observed as:-

> *5. We have carefully gone through the rival arguments. We fully agree to the findings of the Tribunal in the case of Tirupati Starch & Chemicals Ltd. Vs. CCE & ST Ujjain as discussed supra. We find that though number of amendments have taken place from time to time to define "exempted goods" under the Cenvat Credit Rules, 2004 to include non-excisable products/ exempted products in the definition but in Rule 6(2) of the Cenvat Credit Rules, 2004, the expression "final products" have remained unchanged during these years. Thus it is very clear that the legislation has intended to include only those inputs/ services which are used during the manufacture of "final products" and not*

unintended "by-products" which are a necessity of the manufacturing products. We fail to accept that the heat entrapped in flue gases which emerge during the process as waste or by-product can be regarded as a "final product" which is beneficially used by the appellant for manufacture of electricity. It is not the case where the appellant has deliberately used some inputs by adopting a process to manufacture electricity. Therefore, the case laws relied upon by the learned Commissioner (Appeals) are not relevant in so far as the heat emerges as a waste product is concerned. The ratio of the Hon'ble Supreme Court judgment in the case of Union of India Vs. Hindustan Zinc Ltd. [2014 (303) E.L.T. (S.C.)] is squarely applicable to the issue in hand.

7. In view of the aforesaid judgment of this Tribunal, the demand confirmed in the impugned orders cannot be sustained. Consequently, the impugned orders are set aside. Appeals are allowed with consequently relief, if any, as per law.

(Dictated and pronounced in open court)

(Dr. D.M. MISRA)
MEMBER (JUDICIAL)

(R. BHAGYA DEVI)
MEMBER (TECHNICAL)

Raja...