CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH ZONAL BENCH
BANGALORE

Appeal(s) Involved:

E/776/2009-DB

[Arising out of Order-in-Appeal No. 266/2009 dated 01/07/2009 passed by Commissioner (A), Mangalore]

UNITED GALVA LTD
3RD STAGE, MUNDARGI INDL AREA,
BELLARY-583138

Appellant(s)

Versus

Commissioner of Central Excise,
Customs and Service Tax
BELGAUM
NULL NO. 71...CLUB ROAD,
CENTRAL EXCISE BUILDING,
BELGAUM, - 590001
KARNATAKA

Respondent(s)

Appearance:

None — For the Appellant

Mr. K.Murali, AR — For the Respondent

Date of Hearing: 01/08/2018
Date of Decision: 01/08/2018

CORAM:
HON'BLE MR. S.S GARG, JUDICIAL MEMBER
HON'BLE MR. P. ANJANI KUMAR, TECHNICAL MEMBER

Final Order No. 21074 / 2018

Per : P. ANJANI KUMAR

M/s. United Galva Pvt. Ltd. (the appellants) were engaged in manufacture of excisable goods. The Department alleged that during the period from December 2006 to February 2007, the appellants have availed the CENVAT Credit of the duty paid on the inputs viz., H.R. Coils, Zinc and LPG Gas for the clearance of 45.956 MT of Hot Dipped Galvanized Steel coils affected by them. The Department contended that CBEC vide Circular No. 19/19/1994-CX dated 09.02.1994 held that process of galvanization carried out by the assesse does not amount to manufacture therefore, the Hot Dipped Galvanized Steel coils cleared by the appellants cannot be regarded as excisable goods and therefore, the CENVAT Credit availed on the same is not eligible. The Assistant Commissioner vide Order-in-Original No. 53/2008/AC/BLY dated 29.07.2008 has confirmed the demand of Rs.3,14,489/- being equivalent the CENVAT Credit availed by the appellants. The Commissioner (Appeals) vide Order-in-Appeal No. 268/2009 dated 01.07.2009 has upheld the OIA. The appellants have preferred an appeal on the same.

2. The appellants submitted on the grounds of appeal that a SCN has been issued on 08.01.2008 covering a period from December 2006 to February 2007 and hence was time-barred; the purchased C.R. coil falling under Ch. H. 72091890 and after galvanization, the product is cleared under chapter heading

72104100; as there is change in the chapter heading and the character of the goods, the process is a manufacture; the Rules of CENVAT Credit 2004 clearly states that CENVAT Credit shall not be allowed on such quantity of inputs which are used in the manufacture of exempted goods. In the appellants' case, the goods after galvanization are cleared on payment of duty hence CENVAT Credit is available; the definition of manufacture under Section 2(f) is wide and the exemption under Notification No. 1/95 will be applicable and the Board's Circular cannot restrict the term 'manufacture'. The relied upon the case of ***Siddhartha Tubes Ltd. Vs. Collector of Central Excise, 2000 (115) ELT 32 (SC)*** wherein it was held that assessable value of galvanized pipe to include cost of galvanization; after galvanizing, the value of the goods is appreciated and fall under different chapter heading. CBEC vide their Circular No. 314/30/97-CX dated 06.05.1997 has held that galvanization is manufacture. However, none appeared for the appellants.

3. The Authorized Representative has reiterated the findings of OIA and OIO.

4. Heard both sides and perused the records of the case.

5. We find that CBEC vide Circular No. 19/19/1994-CX dated 09.02.1994 has clarified that galvanization does not amount to manufacture within the meaning of Section 2(f) of Central Excise Act, 1944 as held by Commissioner (A). We find that as held by the Commissioner (A), the Tribunal has also held that galvanization does not amount to manufacture. We relied upon the following case laws:

(i) Silvasa Wooden Drums Vs. CCE Vapi-2005 (184) ELT 392 (T-Mum).
(ii) CCE Raipur Vs. Sona Wires Pvt. Ltd. – 2004 (178) ELT 648 (T.Del).
(iii) Siddarth Tubes Ltd. Vs. CCE Indore – 2002 (149) ELT (T.Del.).

6. We also find that Tribunal in the case of ***Faridabad Iron & Steel Traders Association- 2004 (178) ELT 1099 (Del.)*** has held that merely because of change in tariff item, the goods do not become excisable goods and this opinion was upheld by the Hon'ble Supreme Court in the case of ***2005 (181) ELT A68 (SC)***. As the galvanization does not amount to manufacture, the inputs in the galvanization cannot be used in the manufacture of excisable goods; therefore, the credit of the same is not available to the appellants in terms of CENVAT Credit

Rules, 2004. Going by the period involved, we find that CBEC Circular No. 314/30/97-CX dated 06.051997 is not applicable to the case of the appellants; therefore , we find that there is no need to interfere with the order of the learned Commissioner (A).

7. In view of the above, the appeals are rejected.

(Operative portion of the Order was pronounced
in Open Court on **01/08/2018**)

P.ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...