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

Appeal(s) Involved:

E/206/2009-DB

[Arising out of Order-in-Original No. 5/CCE/2008 dated 22/12/2008 passed by Commissioner of Central Excise, Mysore]

M/s. SRI CHAMUNDESWARI SUGARS LTD
BHARATHI NAGAR, K.M.DODDI, MADDUR TALUK, MANDYA DIST-571422

Appellant(s)

Versus

Commissioner of Central Excise, Customs and Service Tax MYSORE
S1-S2...VINAYA MARGA,
SIDDHARTHA NAGAR,
MYSORE - 570011
KARNATAKA

Respondent(s)

Appearance:

Mr. K.Krishnamurthy, Advocate
NO. 108 'SRIMATHA', NHCS LAYOUT,III, STAGE, IV BLOCK,
BASAVESWARANAGAR,
BANGALORE-560079
KARNATAKA

For the Appellant

Mr. Pakshirajan, AR For the Respondent

Date of Hearing: 29/08/2018
Date of Decision: 29/08/2018

CORAM:

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

Final Order No. 21237 / 2018

Per : P.ANJANI KUMAR

M/s. Sri Chamundeshwari Sugars Ltd. (the appellants) have set up a co-generation plant for generating electrical power using bagasse as fuel; they have procured various items for setting up the plant; they have also availed credit on capital goods, falling under Chapter 72 and 73 of the CETA, 1985 procured by them.

2. The Department alleged that the credit taken by the appellants on TMT Bars/Rods used for construction of civil structures in the Co-Gen plant premises; credit availed on various items like transformers, isolated panels, and towers etc. which are used in the Co-Gen plant exclusively for transmission of excess power to KPTCL and credit availed on items which are used in or relation to manufacture of final products is ineligible. A SCN dated 21.07.2008 was issued to the appellants proposing to deny CENVAT Credit of Rs.65,79,902/- and proposing to appropriate Rs.52,94,845/- already paid by the appellants during the investigation. The Commissioner vide Order-in-Original No. 5/CCE/2008 dated 18.12.2008 has held that:

(i) Credit of Rs.3,61,877/- which was availed on the goods installed outside the factory premises at the sub-station of M/s. KPTCL is not available to them.

(ii) Credit of Rs.15,34,368/- availed on transformers, insulators etc. used for stepping up of power generated in their Co-Gen plant for transmission of sub-station of M/s. KPTCL is not available to them.

(iii) Credit availed on TMT Bars, Steel Bars, MS plates, Sheets, Angles, Beams, Channels, HR Sheet, Coils etc., credit of Rs.9,27,439/- is admissible on the capital goods is tubes and pipes and fittings installed in the factory and plant is not admissible.

Thus, the Commissioner held that out of Rs.65,79,902/-/ sought to be denied in the SCN, Rs.56,52,463/- is not admissible. As the appellants have reversed Rs.52,94,845/-, the Commissioner has imposed penalty equivalent to the balance of Rs.3,57,618/-.

3. Aggrieved by the above, the appellants have filed this appeal. The learned counsel for the appellants has submitted that various Courts and Tribunals have held that CENVAT Credit on capital goods used in Co-Gen plant are admissible for credit. The Cases are cited below:

(i) Nizam Deccan Sugars Ltd. Versus Commr. of C. EX., Hyderabad-I 2008 (227) E.L.T. 122 (Tri. - Bang.)

(ii) Birla Corporation Ltd. Versus Commissioner Of Central Excise 2005 (186) E.L.T. 266 (S.C.).

(iii) Commr. OF C. EX., Tiruchirapalli Versus Kothari Sugars & Chemicals Ltd. 2009 (239) E.L.T. 237 (Mad.).

(iv) N.R. Agarwal Industries Ltd. Versus Commr. of C. EX., Vapi 2007 (215) E.L.T. 462 (Tri. - Ahmd.).

(v) Sudalagunta Sugars Ltd. Versus Commissioner of C. EX., Tirupathi 2006 (199) E.L.T. 760 (Tri. - Bang.).

(vi) Sagar Sugars & Allied Products Ltd. Versus Commr. of C. EX., Guntur 2010 (261) E.L.T. 1102 (Tri. - Bang.).

(vii) Final Order No. 51098/2018 dated 27.03.2018- CESTAT New Delhi.

(viii) Commr. of C.Ex., Panchkula Versus Jai Forgings and Stamping (P) Ltd. 2008 (11) S.T.R. 423 (P&H).

(ix) Commr. of C. EX., Coimbatore Versus 2001 (132) E.L.T. 3 (S.C.).

4. The learned AR has reiterated the findings of the Commissioner.

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

6. We find that that the issue involved in the case is availability of the credit on TMT Bars/Rods/Angles falling under Chapter 72 and 73 which are used in the power generation Co-Gen plant set up by the appellants in their factory. The part of the power generated is utilized by the appellants and part of it is transmitted to KPTCL. We find that the issue is no longer ras integra as submitted by the learned counsel for the appellants. The issue is settled by various judgments cited above. We find

that this Bench in the case of Nizam Deccan Sugars Ltd. (Supra) held that capital goods used in Go-Gen power plants for generation of electricity part of which is used by the manufacturers of final product and part of it is sold to power distribution companies are admissible for credit.

7. In view of the above, we allow the appeal.

(Operative portion of the Order was pronounced
in Open Court on **29/08/2018**)

P. ANJANI KUMAR
TECHNICAL MEMBER

S.S GARG
JUDICIAL MEMBER

Parveen...