CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Appeal(s) Involved:

E/21178/2018-SM

[Arising out of Order-in-Appeal No. BEL-EXCUS-000-APP-MSC-052-2018-19 dated 30/04/2018 passed by Commissioner of Central Tax , BELGAUM]

M/s. Hothur Steels
Survey No 288/280,
Halkundi Village,
BELLARY - 583102
KARNATAKA

Appellant(s)

VERSUS

Commissioner Of Central Tax And Central Excise, Belgaum
N0.71, Club Road,
Belgaum - 590001
Karnataka

Respondent(s)

Appearance:

Mr. Raghavendra, Advocate
G. BASAVARAJ
STALL NO.9, SAPTAGIRI
COMPLEX, K.C. ROAD,
BELLARY - 583101
KARNATAKA

For the Appellant

Mr. K. Murali,
Superintendent (AR)

For the Respondent

CORAM:

HON'BLE MR. S.S GARG, JUDICIAL MEMBER

Final Order No. 20345 / 2019

Date of Hearing: 09/04/2019
Date of Decision: 09/04/2019

Per : S.S GARG

The present appeal is directed against the impugned order dated 30.4.2018 passed by the Commissioner (A) whereby the Commissioner (A) has rejected the appeal of the appellant.

2. Briefly the facts of the present case are that the appellants are engaged in the manufacture of sponge iron falling under Chapter 72 of CETA, 1985 and are availing CENVAT credit facility under CENVAT Credit Rules, 2004. The appellant is also manufacturing electricity in his factory for consumption within the factory and has exported/sold excess electricity produced. A show-cause notice dated 20.11.2014 demanding an amount of Rs.17,30,972/- equal to 6% of sale of electricity sold for the period from June 2010 to February 2012 along with interest and penalty. It was alleged that the appellant have used common inputs/services for manufacture of electricity which is an exempted product but failed to maintain separate account as provided under Rule 6 of CENVAT Credit Rules, 2004 and accordingly, liable to pay amount equal to 6% of the value of electricity sold outside the factory. The Asst. Commissioner vide Order-in-Original dated 26.12.2016 confirmed the demand of Rs.17,30,972/- along with interest and equal penalty under Rule 15(2) of the CENVAT Credit Rules, 2004 and also appropriated an amount of Rs.11,93,237/-. Aggrieved by that order, appellant filed appeal before the Commissioner (A), who rejected the same.

3. Heard both the parties and perused the record.

4. Learned counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed by ignoring the binding judicial precedent on the same issue. He further submitted that the electricity so generated out of the waste heat generated in the course of manufacture of sponge iron for which no CENVAT credit has been availed. He also submitted that the electricity is non-excisable goods and therefore, Rule 6(3) is not applicable. He further submitted that provisions of Rule 6 of CENVAT Credit Rules, 2004 are applicable in case of manufacture of dutiable and exempted goods whereas in the present case, the impugned electricity generated out of waste heat recovered from kiln are neither manufactured goods nor exempted goods and hence, the question of either maintaining of separate account or payment of an amount equal to 5% or reversal of proportionate credit in terms of Rule 6 does not arise. For this submission, he relied upon the following decisions:

- ***Jayaswal Neco Industries Ltd. vs. CCE & Cus. Raipur: 2017 (350) ELT 260 (Tri.-Del.) upheld by the High Court in 2018 (14) GSTL 20 (Chhattisgarh)***
- ***UOI vs. Hindustan Zinc Ltd.: 2014 (303) ELT 321 (SC)***
- ***CCE, Allahabad vs. Hi-Tech Carbon: 2018 (17) GSTL 398 (All.)***
- ***UOI vs. Ahmedabad Electricity: 2003 (158) ELT 3 (SC)***
- ***Bellary Steel & Alloys Ltd. vs. CCE, Belgaum: 2006 (199) ELT 808 (Tri.-Bang.)***
- ***Orchid Chemicals & Pharmaceuticals Ltd. vs. CCE, Aurangabad: 2017 (356) ELT 287 (Tri.-Mumbai)***
- ***UOI vs. DCSL Ltd.: 2015 (322) ELT 769 (SC)***
- ***Gularia Chini Mills vs. UOI: 2015 (34) STR 175 (SC)***

4.1 He further submitted that in any case the appellant having reversed the proportionate credit is not liable to pay an amount equal to 5% of the value of electricity sold to outsiders. For this submission, he relied upon the following decisions:

- ***Ind Power Ltd. vs. CCE, Raipur: 2017 (347) ELT 352 (Tri.-Del.)***
- ***Topworth Steels & Power Ltd. vs. CCE: 2017 (345) ELT 656 (Tri.-Del.)***
- ***Sharad SSK Ltd. vs. CCE, Kolhapur: 2014 (304) ELT 595 (Tri.-Mumbai)***
- ***Rukmini Power & Steel Ltd. vs. CCE, Raipur: 2017 (354) ELT 144 (Tri.-Del.)***

5. On the other hand, the learned AR defended the impugned order.

6. After considering the submissions of both the parties and perusal of the material on record, I find that this issue is no more *res integra* and has been settled in favour of the assessee by various decisions relied upon by the appellant cited supra. This issue has been considered by this Tribunal in the case of ***Venkateshwara Power Project Ltd. & Ors. reported in 2018 (11) TMI 913*** and the findings recorded in para 6 are reproduced herein below:

> *"6. After considering the submissions of both the parties and perusal of the material on record, I find that the issue involved in the present appeals is no more res integra and has been settled by the decision of the Allahabad High Court in the case of **Gularia Chini Mills** cited supra which has been approved by the Hon'ble Supreme Court in the case of **UOI vs. M/s. DSCL Sugar Ltd.** cited supra. Further, the Division Bench of the Tribunal in the case of **Jakarya Sugars Ltd.** cited supra has also considered the same issue and after relying upon the judgment of the Allahabad High Court in the case of **Gularia Chini Mills** has held that in the generation of electricity from bagasse, no other input or input service is used and therefore, the electrical energy is neither excisable under Section 2(d) of Central Excise Act, 1944 nor exempted goods and hence, Rule 6 is not applicable."*

And the same ratio has been followed by the Tribunal in the following decisions:

- ***Ugar Sugar Works Ltd. & Ors. vs. CCE: 2019 (3) TMI 31***
- ***Ugar Sugar Works Ltd. vs. CCE: 2019 (2) TMI 860***
- ***Indian Cane Power Ltd. & Others vs. CCE: 2019 (2) TMI 562***

6.1 By following the ratio of the above said decisions, I am of the considered view that the demand of 6% of the value of the electricity is not sustainable in law and therefore, I set aside the same by allowing the appeal of the appellant.

(Operative portion of the Order was pronounced
in Open Court on **09/04/2019.**)

S.S GARG
JUDICIAL MEMBER

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