CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH
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REGIONAL BENCH – COURT NO. 1

Excise Appeal No.54022 Of 2014

[Arising out of OIA No.43/CE/APPL/DLH-IV/2014 dated 17.04.2014 passed by the Commissioner (Appeals), Central Excise, Faridabad]

M/s Hind Udyog **: Appellant**
56-C/2, NIT, Industrial Area,
Faridabad, Haryana-121001

VERSUS

The Commissioner of Central Excise,
Delhi-IV **: Respondent**
Plot No.36-37, Sector-32, Opposite
Medanta Hospital, NH-IV, Gurgaon,
Haryana 121001

APPEARANCE:
Shri N.K. Sharma, Advocate for the Appellant
Shri Yashpal Singh, Authorised Representative for the Respondent

CORAM: HON'BLE Mr. S. S. GARG, MEMBER (JUDICIAL)
HON'BLE Mr. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER No.60244/2024

DATE OF HEARING: 16.05.2024
DATE OF DECISION: 16.05.2024

PER: P. ANJANI KUMAR

The appellants are engaged in the manufacture of steel cubes; they procure bright steel bars being inputs from other manufacturers and they avail CENVAT credit on the same. The Department was of the opinion that the process of drawing from bars and rods does not amount to manufacture and thus, the CENVAT credit availed by them on the same is not admissible; three SCNs dated 04.10.2004, 26.10.2005 and 29.03.2006 demanding a total CENVAT of Rs.98,281/- was issued to the appellant and was confirmed by the original authority vide order dated
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29.03.2013 which was upheld by the Commissioner (Appeals) vide impugned order dated 17.04.2014.

2. Shri N.K. Sharma, learned Counsel for the appellants submits that CENVAT credit cannot be denied only because the process undertaken by their supplier did not amount to manufacture; CBEC vide Circular dated 29.05.2003 clarified that the process did not amount to manufacture; however, the appellants having paid duty on the inputs purchased by them cannot be denied to avail CENVAT credit of the same; Department cannot, on the one hand, collect duty from their input supplier and on the other hand, deny CENVAT credit to the appellant. Learned Counsel submits that the issue is no longer *res integra* in view of the decision of the Tribunal in the case Bhambra Fabricators- 2016 (332) ELT 822. He also relies on the following decisions:

- 2013 (288) E.L.T. 247 (Tri. - Mumbai) AJINKYA ENTERPRISES Versus
- COMMISSIONER OF CENTRAL EXCISE, PUNE-III Affirmed in 2013 (294) ELT 203 (Bombay High Court)
- 2012 (276) E.L.T. 172 (Del.) A ONE LAMINATORS PVT. LTD. Versus COMMISSIONER OF CENTRAL EXCISE
- 2013 (290) E.L.T. 244 (Tri. - Del.) RAS POLYTEX PVT. LTD. Versus COMMISSIONER OF C. EX. & S.T., BHOPAL
- 2013 (293) E.L.T. 382 (Tri. - Del.) HANSA TUBES (P) LTD. Versus COMMISSIONER OFC. EX., CHANDIGARH
- 2002 (143) ELT 619 (Tri. Mumbai) - SINGH SCRAP PROCESSOR LTD. VS. CCE
- 2004 (166) ELT 349 (TRI. MUMBAI) - SYNDET INDIA VS. CCE
- 2004 (176) ELT 209 (TRI. DEL.) - CCE DELHI VS. HINDUSTAN EVEREST TOOLS

3. Learned Counsel further submits that on an identical issue, learned Commissioner (Appeals) vide his order dated 20.01.2016 has decided an identical issue in favour of the similar 96 manufacturers; the said decision was accepted by the Department and no appeal was filed and therefore, the issue has attained finality in favour of the appellants.

4. Shri Yashpal Singh, learned Authorized Representative for the Department, reiterates the findings of the impugned order.

5. Heard both sides and perused the records of the case. We find that there is no provision in the CENVAT Credit Rules to deny credit at the end of the manufacturer who uses the inputs on which duty has been paid though under mistaken notion of law. The appellants having procured the inputs on payment of duty are entitled to avail CENVAT credit on the same. The issue is no longer *res integra* having been decided in several cases. We find that Tribunal in the case of Bhambra Fabricators (supra) held as follows:

> **5.** The ld. Counsel for the appellant submitted that these items were supplied by manufactures/suppliers viz; *Joneja Bright Steel Pvt. Ltd.and Others*. The Tribunal vide Final Order Nos. 54498-54502/2014-EX[DB], dated 20-11-2014 has held that the appellants therein (Joneja Bright Steel (P) Ltd & others) are entitled to avail credit on the excise duty paid on their inputs even though their final product bright bars is held to be not an excisable commodity. The Tribunal in that case has taken the view that as appellants have discharged the duty liability on their final product and availed credit on inputs, there is no justification to deny the credit. If the supplier who supplied the goods is allowed credit even though the finished product is not

an excisable commodity I cannot find any reason to deny the credit to the appellants who have received the goods by paying the duty. In *CCE, Hyderabad* v. *Deepthi Formulations Ltd.* - 2012 (286) E.L.T. 396 (Tri. - Bang.) the Tribunal has taken the view that when the input is received in the factory and used in or in relation to manufacture of final product and payment of duty is evidenced by the invoices the credit cannot be denied. The question whether the input is a result of a process of manufacture is irrelevant. What is relevant is whether duty has been paid or not on such input.

6. In the result, the appeal is allowed.

(Operative part of the order pronounced in the open Court)

(S. S. GARG)
MEMBER (JUDICIAL)

(P. ANJANI KUMAR)
MEMBER (TECHNICAL)

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