CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL CHENNAI

REGIONAL BENCH – COURT NO. III

Excise Appeal No.42591 of 2017
(Arising out of Order-in-Appeal No.40/2017 SLM-CEX dated 14.09.2017 passed by Commissioner of GST & Central Excise (Appeals), Coimbatore]

M/s.Steel Authority of India Ltd. **Appellant**
Salem Steel Plant
Salem 636 013

VERSUS

Commissioner of Central Excise,
No.1. Foulks Compound,
Anai Road,
Salem 636 001 **Respondent**

APPEARANCE :

Ms. Krithika Jaganathan, Advocate
For the Appellant

Shri Vikas Jhajhariya, AC (AR)
For the Respondent

CORAM :

HON'BLE MS. SULEKHA BEEVI. C.S., MEMBER (JUDICIAL)

DATE OF HEARING : 28.02.2020
DATE OF DECISION : 28.02.2020

FINAL ORDER No. 40572 / 2020

Brief facts of the case are that the appellants are engaged in the manufacture of Hot Rolled and Cold Rolled Stainless Steel products etc. and registered with the Central Excise department. They were availing the facility of cenvat credit on inputs, capital goods and input services. It was found that they contravened provisions of Rule 3 (5B) of Cenvat

Credit Rules 2004 as they did not pay up the cenvat credit of Rs.60,91,748/- taken on capital goods which later on being obsolete or non-moving was written off in their books of account. The department was of the view that when the appellants have made provision in their books of account for writing off the obsolete / non-moving capital goods they are required to reverse / pay up the cenvat credit pertaining to such capital goods. Show cause notice was issued proposing to demand credit availed in respect of the capital goods which have been written off in their books of account. After due process of law, original authority confirmed the demand, interest and imposed penalties. On appeal, the Commissioner (Appeals) modified the order by reducing the demand to Rs.43,23,059/-. Aggrieved by such order, the appellant is now before the Tribunal.

2. On behalf of the appellant, Ld. Counsel Ms.Krithika Jaganathan appeared and argued the matter. She adverted to the provisions contained in Rule 3 (5B) of Cenvat Credit Rules,2004 and submitted that the requirement to reverse the credit when credit availed on inputs / capital goods are fully written off was introduced only w.e.f. 11.5.2007. The case of the department is that appellant availed credit on capital goods from 1994 to 2010 and had written off the same in the years 2011-12 and 2013-14. She adverted to the annexure to the SCN to submit that the appellant had not only fully written off as alleged by department and had only partially written off the value of obsolete / non-moving capital goods. This was done in compliance of the provisions of the Income Tax Act wherein the appellant is required to

show the depreciation of the assets. Appellant had only partially written off the value of the obsolete capital goods and had not fully written off the value as can be seen from the data furnished by the appellant which is part of the SCN. Appellant written off 90%, 70%, 50% of the capital goods for the period 1994-2010. However, the department is of the view that appellant has fully written off the value of the capital goods and that appellant has to reverse the credit in respect of these capital goods. The allegation of the department that appellant has fully written off the value is incorrect. In fact, the Commissioner (Appeals) had granted relief to the appellant in respect of certain documents wherein appellant showed that the value was partially only written off. The alleged credit is from 1994 to 2010 and the SCN is issued in 2015. Appellant and submitted that the value was only partially written off. It can be seen from the annexure to show cause notice that appellant has not written off the full value of capital goods pertaining to the year 1994-2010.

3. Further that the provision requiring the assessee to pay up cenvat credit in respect of partially written off capital goods/ inputs was introduced only w.e.f. 1.3.2011. The appellant has been complying with the provisions after this date whenever the capital goods were partially written off. The demand pertains to the credit availed on capital goods which were partially written off for the period from 1994-2010 and therefore allegation that appellant has fully written off after such date is factually incorrect. It is also added by her that even though the provision for reversing the credit in respect of partially written off

capital goods / inputs was introduced in 2011, the machinery for recovery of such wrongly availed credit was introduced only w.e.f. 1.3.2013. She relied upon the decision of the Tribunal in the case of *Ericsson India Pvt. Ltd. Vs CCE Jaipur* - 2019 (30) TMI 776 – CESTAT NEW DELHI to argue that even when the assessee had not reversed the credit corresponding to the partially written off value of capital goods since there was no machinery for recovery of the wrongly cenvat credit prior to 1.3.2013, the demand cannot sustain. Decisions in the case of *GE India Industrial Pvt. Ltd. Vs CCE Bangalore* - 2016 (10) TMI 138 CESTAT BANGALORE and *Kirloskar Ferrous Industries Ltd. Vs CCT* and *CE Belgaum* – 2018 (11) TMI 348 – CESTAT BANGALORE were also relied upon by the Ld. Counsel.

4. Ld.A.R Shri Vikas Jhajharia appeared for the department and argued the matter. He supported the findings in the impugned order. It is stressed by Ld. A.R that appellants have not produced any documents to show that they have only partially written off the value of the capital goods. Adverting to para-7 of the impugned order, he submitted that the Commissioner (Appeals) has observed that though writing off is for the period 1994-2010, it is carried over every year and the cumulative figures find place in the balance for the financial years 2010-11 to 2013-14; that SCN is issued basing on the profit and loss accounts and schedules appended thereto for the period 2010-11 to 2012-13 and also details of obsolete and non-moving items for which provisions were made in their books of accounts upto 31.3.2014 as furnished by the appellant; that therefore it is clear that appellants have fully written off

value of capital goods for the period after 2010. The demand raised invoking the extended period is therefore legal and proper.

5. Heard both sides.

6. The issue is whether the appellants are liable to pay up the cenvat credit pertaining to the capital goods of which the values have been written off in their books account. Allegation of the department is that value of the capital goods has been fully written off and therefore appellants are liable to reverse credit availed for the period 1994-2010 and carried over for the period 2011 and upto 2013-14. I do not find any reason as to how the department has called upon to pay up the cenvat credit availed and written off by the appellants, whether partially or fully for the period from 1994-2010 by issuing a show cause notice on 30.4.2015. The annexure to the SCN shows the demand is raised in respect of the credit availed from 1994 to 2010. This annexure shows the year of purchase of capital goods from 1994 to 2009 and the written off the value is done during this period. In the year 2010 and thereafter, there is no writing off the value of the capital goods but the amounts were carried forward to subsequent years. The act of writing off has happened prior to 2010. Thus the allegation that the appellants have written off the value after the period 2010 is factually incorrect as evidenced from annexure to the show cause notice. For this reason itself, the demand raised invoking the extended period in my view cannot sustain. However, going into the merits of the matter, it is necessary to reproduce Rule 3(5B) as amended in 2013 which is as under :

"(5B) If the value of any,

(i) input, or

(ii) capital goods before being put to use,

on which CENVAT credit has been taken is written off fully or partially or where any provision to write off fully or partially has been made in the books of account then the manufacturer or service provider, as the case may be, shall pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods :

Provided that if the said input or capital goods is subsequently used in the manufacture of final products or the provision of output services, the manufacturer or output service provider, as the case may be, shall be entitled to take the credit of the amount equivalent to the CENVAT credit paid earlier subject to the other provisions of these rules.

Explanation. – If the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rules (5), (5A), and (5B), it shall be recovered, in the manner as provided in rule 14,for recovery of CENVAT credit wrongly taken."

7. It is for the department to prove the allegations raised in the SCN. Even from the SCN or the documents placed before me, there is no evidence to show that the appellants have written off the full value of capital goods. There is only partial writing off to the extent of 50%, 70%, 90%. On such score, the amendment brought forth w.e.f. 1.3.2011 to reverse the credit on partial written off value would only apply. However, the provision for recovery of the credit availed wrongly has been introduced only w.e.f. 1.3.2013. This being the case, the demand raised for the credit availed from 1994-2010 and written off during this period cannot sustain. The Tribunal in the case of *Ericsson India Pvt. Ltd.* (supra) has discussed the same which is reproduced as under :

"7. Having considered the rival contentions, we find that the issue is one of interpretation. We further find that for reversal of cenvat credit on partial writing down of value of inputs , the provision was introduced only first time by amendment of Rule 3(5B) of Cenvat Credit Rules, with effect from

> 01.03.2011. Further, there was no provision prior to 01 March 2013 for recovery of cenvat credit and interest thereon under Rule 3(5B) etc. which was made applicable with effect from 01.3.2013 only, by virtue of Notification No. 3 of 2013-CE(NT) dated 01.03.2013. The notification provides that if the manufacturer of goods or the provider of output service fails to pay the amount payable under sub-rule (5), (5A) and (5B), it shall be recovered, in the manner as provided in Rule 14, for recovery of CENVAT credit wrongly taken.
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> 8. Learned Counsel have also pressed the ground that as they were not required to reverse the cenvat credit on partial writing down the value of inputs, prior to 01.03.2011, accordingly, we hold that as there was no such legal requirement. The learned Counsel also prays that they are entitled to refund, already reversed credit on account of partial writing down of value, prior to 01.03.2013.
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> 9. In this view of the matter, we hold that the issue has arisen due to change of opinion on the part of the Revenue, but there is no suppression of facts on the part of the appellants. Further, we find that no amount was due to be reversed under rule 3(5B) on the date of issue of show cause notice. Accordingly, we hold that larger period for limitation can not be invoked and no show cause notice was required to be issued. Accordingly, we hold that impugned order is not sustainable, and is set aside. Appeal is allowed with consequential relief. In this view of the matter, we set aside the demand, penalty and interest."

In *Sanghavi Engineering Vs CCE Hyderabad* - 2013 (297) ELT 277 (Tri.-Bang.) similar view as discussed wherein requirement to reverse the credit when the value has been partially written off would take effect only after 1.3.2011 was noted.

> "**2.** In view of the cited provisions, it has to be held that, prior to 1-3-2011, a manufacturer of final product who availed Cenvat credit on inputs was not required to reverse any part of that credit on the ground of a part of the value of the inputs being written off the books of account. Only cases of writing off the full value of the inputs on which Cenvat credit had been availed called for reversal of the credit. The present one is not such a case. It is also pertinent to note that the Department has no case that the amendment dated 1-3-2011 has retrospective effect."

Similar view as taken in *M/s.Kirloskar Ferrous Industries Ltd*.(supra) and relevant portion of the order is reproduced as under :

> "5. After considering the submission of both the parties and perusal of the material on record, I find that from the show cause notice itself, it is clear that there was no provision for full write off of inputs and capital goods. The audit party raised the objection that the appellant has made a provision for write off of the inputs and capital goods and demanded the reversal of the same. In reply to the audit note, the appellant had written letters dated 24.4.2011; 25.11.2011 and 8.7.2013 whereby the appellant has clarified that the provisions to write off was partially made. I find that this provision to reverse the proportionate CENVAT credit on partially write off came into

> existence from 1.3.2011 whereas the period involved in the present case is 2009-10. I find that the inventory against which the partial write off was made was available with the appellant and there was no physical removal of the goods. In reply to the show-cause notice also, the appellant has given a detailed chart showing that there was partial write off. Further, I find that the Tribunal in the case of Sanghavi Engineering cited supra has held that prior to 1.3.2011, a manufacturer of final product who availed CENVAT credit on inputs was not required to reverse any part of that credit on the ground of a part of the value of inputs being written off in the books of accounts. The amendment w.e.f 1.3.2011 was not retrospective and it was prospective. Therefore, by following the ratio of Sanghi Eng. cited supra, I am of the view that the impugned order is not sustainable in law on merit as well as on limitation. Therefore, I set aside the impugned order by allowing the appeal of the appellant with consequential relief, if any."

8. From the discussions made above, and following the above decisions, I am of the considered opinion that the demand cannot sustain. Impugned order is set aside. Appeal is allowed with consequential relief, if any.

(Dictated and pronounced in open court)

(Sulekha Beevi C.S.)
Member (Judicial)

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