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

Appeal No.E/553/2008

[Arising out of Order-in-Original No.14/2008 dt. 23.09.2008 passed by the Commissioner of Central Excise, Tiruchirapalli]

M.M. Forgings Ltd. Appellant

Versus

Commissioner of Central Excise,
Trichy Respondent

Appearance:

Shri S. Murugappan, Advocate
For the Appellant

Shri S. Nagalingam, AC (AR)
For the Respondent

CORAM :

Hon'ble Ms. Sulekha Beevi C.S. Member (Judicial)
Hon'ble Shri Madhu Mohan Damodhar, Member (Technical)

Date of hearing / decision : 19.04.2017

FINAL ORDER No. 40639/2017

Per Sulekha Beevi C.S

The appellants are aggrieved by the disallowance of credit on Raw Die Blocks and Inserts as inputs which were used in the manufacture of Dies which, in turn, are used by appellants in the production of finished excisable products, namely, Steel Forgings.

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2. The appellants are manufactures of forgings and are registered with the Central Excise department. They are availing the facility of cenvat credit on inputs and intermediate goods. On scrutiny of records of appellant, it was noticed that for the month of December 2006 to November 2007, the appellants have availed cenvat credit to the tune of Rs.70,08,429/- on Raw Die Blocks and Inserts under the category of "inputs". The department entertained a view that Raw Die Blocks and Inserts used to manufacture Dies which are in turn used in the production of final products is not eligible for credit for the reason that the appellants are availing exemption of duty on the intermediate goods namely Dies under Notification No.67/95-CE dt. 16.03.95. The show cause notice was issued proposing to recover wrongly availed credit along with interest and also proposing to impose penalties. After due process of law, original authority confirmed the demand of Rs.70,08,429/- along with interest and also imposed equal penalty.

3. Aggrieved with this order, appellants are now before Tribunal.

4. On behalf of appellant, Ld. Counsel Shri S. Murugappan submitted that appellants have purchased Raw Die Blocks and Inserts by payment of duty. The said items were utilized in the manufacture of "Dies" and such Dies were used for production of the final products namely steel forgings. Since appellants are eligible for exemption of duty on such Dies, under Notification No.67/95-CE, they have been availing such exemption. He refers to the definition of "capital goods" as well as "inputs" and submits that definition would cover the subject items and therefore credit ought to have been allowed. He stresses upon *Explanation-2* to definition of "inputs" and submitted that the said *Explanation* states that input includes goods used in the

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manufacture of "capital goods" which are further used in the factory of manufacture; that by this *Explanation*, subject items would get covered under the definition of "inputs" although they may be mentioned as "capital goods". It was argued by him that even if appellant pays duty upon such intermediate product, namely Dies, the situation would give rise to revenue-neutrality and therefore on this ground also, demand is unsustainable.

4.1 Ld. Counsel relied upon judgment in the case of *Tata Engineering and Locomotive Co. Ltd. Vs CCE Pune-I* - 2005 (195) ELT 209 (Tri.-Mumbai) and *Natraj Engineers (P) Ltd. Vs CC & C.Ex. Patna* - 2005 (191) ELT 211 (Tri.-Kolkata). It is also submitted by counsel that in the appellant's own case, for different period, the Tribunal has allowed credit in Appeal E/232/2007 vide Final Order No.40135/2017 dt. 02.02.2017.

5. Against this, Ld. A.R Shri S. Nagalingam for the Revenue reiterated the findings in the impugned order. He submitted that since Dies which are manufactured using the inputs, are exempted from duty under Notfn No.67/95-CE, appellants are not eligible to avail credit on such inputs. He relies upon the judgement in the case of *Amforge Inds. Ltd. Vs CCE Pune-I*– 2004 (176) ELT 702 (Tri.-Mumbai) and *Srinathji Ispat Ltd. VS CCE Ghaziabad* – 2010 (262) ELT 849 (Tri.-Del).

6. We have considered the submissions made by both sides.

7. The issue is whether the appellants are eligible to avail credit on Raw Die Blocks and Inserts used by them for manufacture of Dies which are, in turn, used for production of finished products. Undisputedly, the appellants have availed exemption of duty on

intermediate product namely Dies. However, as per the *Explanation-2* to the definition of "inputs", it can be seen that inputs include any goods which are further used in the manufacture of 'capital goods'. Appellants have availed the exemption notification treating the intermediate product as 'capital goods'. The credit has been availed on subject items treating them as "inputs" used in the manufacture of capital goods. The co-ordinate Bench of the Tribunal in the case of *Tata Engineering and Locomotive Co. Ltd.* (supra), had an occasion to deal with a similar issue. Relevant part of the said decision is reproduced as under :-

> "**7.** In so far as merits go, we observe that the machine parts on which exemption under Notification No. 67/95 is availed were used in the maintenance of capital goods captively. The capital goods in turn were used in or in relation to manufacture of final products i.e. motor vehicles/parts which are dutiable. The Supreme Court in the case of *Escort Ltd.* v. *CCE,* 2004 (171) E.L.T. 145 has decided as to what constitute final product. The ratio of this decision applies to the present case even though the Supreme Court was interpreting the provisions of Notification No. 217/86-C.E. We hold that the final products in the present case are motor vehicles/parts and since they are not exempt from payment of duty, the appellant is entitled to take credit of duty paid on the inputs that have gone into the manufacture of intermediate goods (machine parts) which have been captively consumed."

8. Following the judgement rendered by the Division Bench of Tribunal (supra) as applied to the facts presented before us and appreciating the evidence, we hold that appellants are eligible for credit. Impugned order disallowing credit is set aside. Appeal is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in open court)

(Madhu Mohan Damodhar)	**(Sulekha Beevi C.S)**
Member (Technical)	**Member (Judicial)**

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सहायक पंजीकार / Asst. Registrar
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चेन्नै / Chennai