CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI

PRINCIPAL BENCH – COURT NO. 4

E-HEARING

Excise Appeal No. 50769 of 2022

(Arising out of Order-in-Appeal No. RPR-EXCUS-000-APP-067-21-22 dated 21.10.2021 passed by the Commissioner, Central Excise, Customs & Service Tax, Raipur)

M/s Mahendra Sponge & Power Limited **Appellant**
Plot No. 76-77, Sil Tara Industrial Area,
Raipur (CG)

Versus

Commissioner, Central Excise & Customs, Raipur **Respondent**
Manik Bagh Palace,
Indore (MP)

Appearance:

Present for the Appellant: Shri Ankur Upadhyay, Advocate

Present for the Respondent: Shri Kuldeep Rawat, Authorized Representative

CORAM:
Hon'ble Dr. Rachna Gupta, Member (Judicial)

Date of Hearing : 07/08/2025
Date of Decision : 19/09/2025

Final Order No. 51325/2025

Dr. Rachna Gupta:

The appellant herein is engaged in manufacture of iron and steel and thus is a holder of Central Excise registration. Appellant is also availing Cenvat credit on capital, input and input service in terms of Cenvat Credit Rules, 2004[1]. During the scrutiny of ER-1 returns of the appellant, it was found that while manufacturing excisable goods, the appellants were also indulged in generation of electricity which was captively used and part of it was also sold by

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1 **(hereinafter referred as CCR, 2004)**

them. It was observed that during the period from April 2013 to March 2016 appellant availed Cenvat credit of duty paid on input and input services like GTA, Cargo Handling for Coal, Security service, Manpower Recruitment Services etc. but the same inputs were used for generation of electricity which is not eligible to duty of Excise hence is an exempted good. The electricity so generated but was being sold outside the factory for monitory considerations.

2. In view of these observed facts, department alleged that the appellants have wrongly availed the Cenvat credit in violation of Rule 6(1), 6(2), 6(3A), 6(3C) and 6(3D). Accordingly, a show cause notice bearing No. 04-05/2017 dated 24.8.2017 was served upon the appellants proposing the reversal of amount of Rs. 28,56,554/- of Cenvat credit along with the interest. Penalties were also proposed to be imposed on the appellants. The proposal was initially confirmed vide Order-in-Original No. 22/2020-21 dated 24.11.2020. The appeal against the said order has been rejected by Commissioner (Appeals) vide its order bearing No. 05/2021 dated 21.10.2021. Being aggrieved of the said order, the appellant is before this Tribunal.

3. I have heard Shri Ankur Upadhyay, learned counsel for the appellant and Shri Kuldeep Rawat, learned Authorized Representative for Revenue.

4. Learned counsel for the appellant has submitted that the department has wrongly calculated the proportional Cenvat credit as the value of total inputs have been used also the value of electricity generated through waste heat recovery plant in respect of which no Cenvat credit was availed by the appellant, has been

included. It is further submitted that before the issuance of show cause notice itself, the appellant had reversed proportionate credit of Rs. 16,12,812/- in terms of Rule 6(3)(A) of Cenvat Credit Rules, 2004. The appellant cannot be asked to reverse the credit again. The order confirming the demand is therefore, liable to be set aside. Learned counsel relied upon the following decisions:

(i) Bhagwati Power and Steels Ltd. Vs. CCE, Raipur (CG)[2];

(ii) E-Connect Solutions (P) Ltd. Vs. CCE, Udaipur[3].

5. Finally, it is submitted that there is no suppression or fraud involves on part of the appellant. The appellant themselves have reversed proportionate credit in terms of Rule 6(3)(A) of CCR, 2004 that too, before issuance of the show cause notice. Appellant is otherwise regular in filing ER-1 returns. Hence the extended period has wrongly been invoked. While issuing the impugned show cause notice is alleged to have barred by time. Appeal is accordingly, prayed to be allowed.

6. While rebutting these submissions, learned Departmental Representative has reiterated the findings arrived at by the adjudicating authorities below. It is submitted that no evidence has been produced by the appellant about details of units of electricity sold which was manufactured from waste heat recovery plant. Nor any evidence has been produced about service tax credit taken in respect of power plant. Hence Rule 6(3)(A)(c)(iii) of Cenvat Credit Rules, 2004 has rightly been applied. Impressing

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2 Final Order No. 50004/2022 dated 04.01.2022
3 2021 (376) ELT 678 (Tri.-Del.)

upon no infirmity in the order under challenge. Appeal is prayed to be dismissed.

7. Having heard both the parties, it is observed that apparently and admittedly, coal is the only input used in the instant case and the input service is only coal handling service. Rule 6 makes it apparently clear that the value of such input / input services which have been used commonly for manufacture of excisable as well as of exempted goods or for providing taxable as well as exempted services shall be calculated in terms of Sub-Rule 3(A) of said Rule 6 of CCR, 2014. In the present case, the input services of electricity from raw material (coal) have been used in generation as well as from waste. Also that electricity so generated (by both ways) is partly used captively and is partly being sold. There cannot be the tax liability with reference to the electricity generated from waste. However, it is observed that the adjudicating authority below has taken into consideration value of all inputs, input service used for manufacture of entire sponge iron and entire electricity generated. The calculation of reversal made by Revenue under the impugned order therefore, does not appears to be correct.

8. Further, it is observed that the sponge iron manufactured as well as electricity produced by the appellant both are excisable goods. However, in terms of Rule 2(d) of Cenvat Credit Rules, 2004, electricity produced by the appellant is an exempted good being chargeable but to Nil rate of duty. As already observed that admittedly the electricity so generated by the appellant has being used captively as well as sold to other buyers and on such sales no duty was paid by the appellant because of the aforesaid exemption

to generation of electricity. The availment of Cenvat credit on the inputs/input services used by the appellant definitely shall be governed by Rule 6(3) of CCR, 2004. Since the separate account was not maintained by the appellant under Rule 6(3) of Cenvat Credit Rules, 2004 will be applicable in terms whereof either 5% of the value of exempted goods and exempted service was to be paid or such an amount as is calculated in terms of Rule 6(3A)(c)(i) with respect to calculating amount of Cenvat credit on imports used in or in relation to manufacture of exempted goods and Rule 6(3)(A)(C)(iii) for an amount attributable to input service used in or in relation to manufacture of exempted goods. Accordingly, Cenvat credit attributable was to be calculated based on the following formula:

> <u>Cenvat credit availed x input used in Power Plant x Generation of power plant to sale ratio input received.</u>
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> = Amount finally payable.

Board Circular No. 754/70/2003 CX dated 9.10.2003 also clarifies that CENVAT Credit Rules, 2004 is only for common inputs and input services and the 8% reversal is also for common input and input services alone. Accordingly the question of including the input and input service exclusively used for manufacturing sponge iron and for manufacturing electricity for own consumption dutiable at all does not arise. In the present matter department considered the clearances value of Iron Ore Fines, Coal, Dolomite, Coal Fines and raw materials as exempted goods, which is prima facie wrong. In para 3.10 of the impugned order-in-appeal the detail of the said goods are given. The provision of Rule 6 of CCR, 2004 does not deal with the clearance of raw materials which are exempted from the duty.

In view of above, it is clear that in the present matter department wrongly considered the value of exempted goods.

9. Further a clarification in Chapter 5 of CBEC says that CENVAT Credit is also admissible in respect of amount of inputs in the form of waste/ refuse of by product. Similarly, the CENVAT Credit is not to be denied if the inputs are used in intermediate product of the final product even if such intermediate is exempted from payment of duty. Thus the basic idea is that CENVAT Credit is admissible so long as the input are used in or in relation to manufacture of excisable final product, whether directly or indirectly. In case exempted goods are simultaneously manufactured or exempted services are being provided along with taxable services, the value of attributable Cenvat shall be as calculated based on the formula mentioned above.

10. In view of the above discussion, the calculation based upon total value of input/input service is held to be wrong. Commissioner (Appeals) had to take the value of coal and coal handling service only to such an extent as was used for generation of such an amount of electricity which was sold outside. The amount of Rs. 10,43,996/- as has been allowed to be short reversed is therefore, held to be a wrong calculation. I draw my support from the decision of this Tribunal in the case of **M/s. Sify Technologies Ltd. Vs. CCE & ST (LTU) Chennai**[4] **.**

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4 2014-TIOL-60 CESTAT Chennai

11. Coming to the plea of limitation as raised on behalf of the appellant, it is observed that the impugned show cause notice dated 24.8.2017 has proposed the reversal of Cenvat credit availed and utilized for the period 2015-16. It is apparent that the show cause notice has been issued beyond the normal period prescribed for the purpose. Department has not produced any evidence about alleged suppression on part of the appellants.

(i) Admittedly appellant was regular in filing the returns all information was already in the notice and knowledge of the department;

(ii) The proportionate credit was reversed by the appellants voluntarily prior issuance of the show cause notice. In such circumstances, it is held that the extended period has wrongly been invoked.

12. Resultantly, the show cause notice gets barred by time. Confirmation of demand on such show cause notice is not sustainable. I draw my support from Hon'ble Supreme Court in the case of **Anand Nishikawa Co. Ltd. Vs. CCE, Meerut**[5] wherein it has been held that suppression of facts can have only one meaning that the correct information was not disclosed deliberately to evade payment of duty, when facts were known to both the parties. The omission by one to do what he might have done not that he must have done would not render it suppression. There must be some positive act from the side of the assessee to find willful suppression.

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5 **2005 (188) ELT 149 (SC)**

13. In the light of entire above discussion, the order under challenge is hereby set aside. Consequent thereto, the appeal stands allowed.

(Pronounced in open Court on 19.09.2025)

(Dr. Rachna Gupta)
Member (Judicial)

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