CUSTOMS EXCISE & SERVICE TAX APPELLATE TRIBUNAL,

West Block No.2, R.K.Puram, New Delhi

COURT-I

Date of hearing: 17.04.2017
Date of Pronouncement:22.05.2017

Appeal No. E/55884/2014-EX[DB]
[Arising out of the Order-in-Appeal No. 110(ST)/RPR-I/2014 dated 25.08.2014, passed by the Commissioner of Central Excise, Raipur]

C.C.E. & S.T. Raipur … Appellant

Vs.

M/s. Shiv Shakti Steels Pvt. Ltd. ... Respondent

Appearance:

Present Shri M.R. Sharma, DR for the appellant
Present None for the respondent

Coram: Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. V. Padmanabhan, Technical Member

FINAL ORDER No. 53393/2017

Per V. Padmanabhan:

The present appeal is against the Order-in-Appeal No. 110/2014 dated 25.8.2014 passed by Commissioner (Appeals) Raipur.

2. The respondent is engaged in the manufacture of sponge iron falling under chapter 72 of the Central Excise Tariff Act, 1985. They are availing Cenvat credit on inputs, capital goods, and input services under the Cenvat Credit Rules, 2004. Revenue noticed that along with their main final product i.e. the

sponge iron the respondent also manufactures iron ore fines which are cleared without payment of duty. The respondent is availing Cenvat credit on the services of transport of goods by road which is commonly used for both the dutiable as well as exempted goods. They have not maintained separate accounts in respect of such input service which is commonly consumed for dutiable as well as exempted products. Revenue took the view that in terms of the provisions of Rule 6(2), of the Cenvat Credit Rules, 2004, the appellant was required to pay an amount equal to 10% of the value of the exempted goods sold by them. On these lines, the original adjudicating authority confirmed the demand for an amount of Rs. 36,42,083/- along with interest in terms of Rule 6 (3)(c) of the Cenvat Credit Rules 2004. When the issue was carried in appeal, Commissioner (Appeals) decided the issue in favour of the respondent by setting aside the demands raised. Aggrieved by the impugned order, revenue is in appeal.

3. With the above background we heard Sh. M.R.Sharma, DR for the appellant. None appeared on behalf of the respondent.

4. From records it is seen that the respondent has availed credit on common input services i.e. transportation services. However, they have not maintained separate accounts for the use of the common input services in dutiable as well as exempted products. Accordingly, demand was originally raised in terms of rule 6(3) considering the iron ore fines as a separate exempted finished product.

5. The case of the respondent is that iron ore fines emerge as an inevitable waste while screening and crushing the iron ore for removal of smaller particles prior to the manufacture of sponge iron. Since these cannot be considered as separate final products, there is no need for reversal of 10% of the value of the exempted goods even though a part of the input services has been used in the manufacture thereof. The view taken by the lower authority in the impugned order is that the conditions of rule 6(3) of the Cenvat Credit Rules become applicable only if the manufacturer consciously manufactures dutiable and exempted final products using common Cenvat credit availed on input and or input services. Accordingly, he has held that since in the present case, the exempted final product has emerged as an unavoidable waste or by-product, compliance of provisions of rule 6(2) is impossible. He has relied upon several case laws.

5. We find that the issue is no more res integra in as much as the issue stands decided in favour of the respondent in many decisions including the following.:

i) CCE Vs. Aarti Sponge and Power Ltd. 2016(333) ELT 415 Tri-Del)

ii) CCE Vs. Hygrade Pallets Ltd. 2010(249) ELT 266 Tri-Bang

iii) M/s SKS Ispat & Power Limited Vs. CCE F.O No. 52255/2016 dated 27.6.2016.

6. In view of the above discussions, we find no infirmity in the impugned order and hence we uphold the same. Consequently we reject the appeal filed by revenue.

[Order Pronounced in the open court on 22.05.2017]

(Justice Dr. Satish Chandra)
President

(V. Padmanabhan)
Technical Member

Bhanu