IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Decision: 31.8.2017

Appeal No. E/52886-52887/2016-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-420-419-15-16 dated 17.3.2016 passed by the Commissioner of Customs, Central Excise & Service Tax, Raipur)

M/s Vandana Global Ltd. Appellant

Vs.

CCE & ST, Raipur Respondent

Appearance

Ms. Surbhi Sinha, Advocate - for the appellant

Shri G.R. Singh, A.R. - for the respondent

CORAM: **Hon'ble Mr. Ashok Jindal, Member (Judicial)**

Final Order No. 56765-56766/2017

Per Ashok Jindal :

The appellant is in appeal against the impugned orders wherein the Cenvat credit on the short receipt goods from job worker has been denied to the appellant during the period June,2008 to August, 2013.

2. The facts of the case are that the appellants sent certain inputs for processing to the job worker and after processing the processed goods have been received by the appellant which were not equal to the goods sent to the job worker. Therefore, on short receipt of the

job work goods (on differential quantity), the Revenue sought to deny Cenvat credit to the appellant on the ground that the same has not been received back from the job worker. Aggrieved from the said orders, the appellant is before me.

3. Ld. Counsel for the appellant submits that there is no allegation of diversion of inputs by the job worker. Moreover, the inputs were sent to the job worker and the same has been processed. During the processing of the said input certain loss incurred and due to those losses, the appellant received less quantity of processed goods. As there is no allegation of diversion of inputs or processed goods, the Cenvat credit taken up by the appellant cannot be denied in the light of decision in the case of ***Real Ispat & Power Ltd. Vs. CCE, Raipur -*** 2016 (335) ELT 325 (Tri.-Del.). It is also contended by the ld. Counsel that for the subsequent period, the ld. Commissioner (Appeals) himself has allowed Cenvat on differential quantity of short receipt of processed goods. Therefore, the impugned orders are to be set aside.

4. On the other hand, ld. AR reiterated the findings of the impugned order.

5. Heard both sides considered the submissions.

6. In this case, the Cenvat credit sought to be denied on the differential quantity between processed goods and input sent to the job worker. The short receipt of processed goods is only on account of process loss at the end of the job worker and there is no allegation that either the inputs have been diverted or the processed goods have been diverted. In the absence of those evidence, the Cenvat credit cannot be denied on the differential quantity of inputs and processed goods. The same view has been taken by this Tribunal in the case ***Real Ispat & Power Ltd.*** (supra) has observed as under :

> "**6.** I find that the demand pertains to the period April, 2010 to January, 2012. The SCN was issued on the basis of audit observation that in nine cases of procurement of coal, the quantity was short received on account of the loss associated with the washing of coal in coal washery. The Revenue is of the view that since there was no short receipt in case of other consignments, the explanations offered by the appellant is not convincing. I find from the delivery orders that while issuing the same to the appellant, M/s. SECL also mentioned therein the name of Coal washery M/s. ACS (India) Ltd. - CHAKABURA for processing of coal. The said Coal washery after undertaking the process of beneficiation of coal had charged service tax thereon and cleared the same to appellant. The facts of the case are thus not much in dispute. It is an accepted fact that the coal was sent to Coal washery for processing of coal so that it can be used in the manufacturing process. The loss of weight due to removal of ash content, mud, fines occurred due to such coal washing process has to be considered as arising during the course of manufacture of final product of the appellant and credit has to be allowed to the appellant. The Revenue has sought to disallow the credit on the sole ground that in case of other consignments, the quantity was not found short. I find from the

> records that since the other consignments of coal were not sent for washing, there was no weight loss. However, since the disputed nine consignments were sent for washing, the loss in weight has occurred. Thus, I am of the view that the reasoning advanced by the Revenue cannot be a defensible ground for disallowance of Cenvat credit. It is an undisputed fact that the coal was sent for washing and the loss in weight occurred due to its processing as apparent from the records of the appellant. This records and facts has not been disputed by the Revenue. I also find that the certificate issued by the Central Institute of Mining & Fuel Research, Bilaspur Unit (Council of Scientific & Industrial Research), Bilaspur (Chhattisgarh) working under Ministry of Science & Technology, Govt. of India clarifies that there is positive correlation between percentage of ash reduction and loss of coal volume i.e. yield of washed coal and that on 1% of ash reduction in coal there is volume loss of approx. 2.5%. I also find that as per IEA Clean Coal Centre of International Energy Agency loss in coal washery accounts for 20-30% loss through the separation process for mineral matter from the coal. In such view of undisputed facts as well as submission of the appellant, I am of the opinion that the reasons canvassed by the Revenue for disallowing Cenvat credit is not sustainable. I also find that there is no ground to impose penalty under Rule 15 of the Cenvat Credit Rules, 2004 as the demand is itself not sustainable. Further in SCN, no facts have been brought on record which can show the *mala fide* intention or suppression on the part of the appellant. I, therefore, hold that the penalty imposed on the appellant is also not sustainable.
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> **7.** In view of my above observations, I hold that the impugned order is not sustainable, and hence, the same is set aside and the appeal is allowed in favour of the appellant with consequential relief, if any, as per law."

Further, I find that for the subsequent period in appellant's own case, the ld. Commissioner (Appeals) has allowed Cenvat credit on the differential quantity of input and processed goods. Under this circumstances, I hold that the appellant is entitled to avail Cenvat credit on differential quantity of inputs and processed goods received from the job worker. Therefore, I do not find any merit in the impugned orders, the same are set aside.

7. Consequently, the appeals are allowed.

(Dictated & pronounced in open Court)

(Ashok Jindal)
Member (Judicial)

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