CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
West Block No.2, R. K. Puram, New Delhi, Court No. 1

Date of hearing/decision: 09.10. 2017

E/CoD No. 50596 /2017 and Ex. Appeal No. 51226 of 2017
(Arising out of order-in-original No. 54/COMMR/CEX/UJN/2017 dated 30.03.2017passed by the Commissioner, Central Excise, Ujjain).

M/s Magnum Steel Limited Appellant

Vs.

CCE&ST, Ujjain Respondent

Appearance:

Sh. Abhash Mishra, Advocate for the assessee
Sh. R. K. Mishra, AR for the Revenue

Coram:

Hon'ble Mr. Justice (Dr.) Satish Chandra, President
Hon'ble Mr. B. Ravichandran, Member (Technical)

Final Order No. 57120/2017

Per: **B. Ravichandran**:

For the reasons mentioned in the CoD application, the delay in filing the appeal is condoned.

2. With the consent of both sides we proceed to hear the appeal itself after hearing Sh. Abhash Mishra, ld. Advocate for the appellant and Sh. R. K. Mishra, ld. AR for the Revenue.

3. The appeal is against the order-in-original No. 54/COMMR/CEX/ UJN/2017 dated 30.03.2017 passed by the Commissioner, Central Excise, Ujjain.

4. The appellant are engaged in the manufacture of twisted bars & rods, bars & rods of steel, cast iron castings and ingot moulds etc. The dispute in the present case relates to credit availed by the appellant on certain cast iron and moulds purchased from their dealers which were originally cleared by the appellant on payment of duty. The Revenue entertained a view that such goods which were cleared earlier by them and purchased back from the dealers is not covered by either category of "input" or "capital goods" for the purpose of Cenvat Credit Rules, 2004. Accordingly, proceedings were initiated against the appellant to deny such credit availed in two instalments in the month of March 2011 and April 2011. The original authority held that the appellant are not eligible for such credit and accordingly imposed penalty on demand.

5. Ld. Counsel for the appellant submits that the credit availed by the appellant are proper and he relied on the provisions of Rule 16 of Central Excise Rules, 2002. He admitted that the claim under Rule 16 was not made before the lower authorities. Regarding the use of the goods which were purchased on which credit is now in dispute, he stated that the use as input or capital goods is not coming out from the record.

6. Ld. AR for the Revenue contested the appeal. He submitted that the moulds are neither their input nor capital goods and in terms of Rule 2 read with Rule 3 of the Cenvat Credit Rules, 2004, no credit is admissible. The appellant are raising a fresh ground in the appeal, now which is not tenable.

7. Ld. Counsel for the appellant did not press the case for their claim of credit either under inputs or as capital goods in terms of Cenvat Credit Rules,

2004. His main plea is that Rule 16 is wide enough to cover such situation and they should be allowed the benefit of Rule 16. We note that duty was paid on disputed goods and the same is not in question. The eligibility of credit on such repurchased appellant's own goods is in question. We note that the applicability of Rule 16 alongwith the supporting documents requires fresh examination by the original authority, since this is legal issue raised by the appellant before us. We deem it fit and proper, to remand the matter to the original authority for a fresh look at the case. The appellant shall be provided adequate opportunity of hearing to present their case.

5. In the result, the impugned order is set aside and appeal is allowed by way of remand.

(Dictated and pronounced in the open Court).

(Justice (Dr.) Satish Chandra)
President

(B. Ravichandran)
Member (Technical)

Pant