IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI
PRINCIPAL BENCH, COURT NO. IV

Excise Appeal No. 51019 of 2017

[Arising out of Order-in-Appeal No BHO-EXCUS-002-APP-367-16-17 dated 23.1.2017 passed by the Commissioner (Appeals), Central Excise, Customs & Service Tax, Raipur (CG)]

M/s. Anjani Steel Ltd. **Appellants**

Vs.

Commissioner of Central Excise & ST, Raipur **Respondent**

Appearance:
Shri K Krishna Mohan Menon, Advocate for the Appellants
Shri G R Singh, AR for the Respondent

CORAM:

Hon'ble Shri Anil Choudhary, Member (Judicial)

Date of Hearing /decision: 18.10.2017

FINAL ORDER NO. 58116 /2017 SM

Per Anil Choudhary:

The issue in this appeal is whether the appellant, manufacturer of billets etc., is entitled to Cenvat credit on items HR sheets, MS around and oxygen gas.

2. Show cause notice dated 07/10/2015 was issued alleging that according to the definition of inputs as given in Rule 2(k) of Cenvat Credit Rules, 2000, HR sheet, MS around, oxygen gas cannot be considered as input as it appeared to Revenue that these items have not been used in relation to manufacture of final products relating to the period November, 2014 to August, 2015. The appellant contested the show cause notice and filed reply wherein they stated that MS round is used as poking rods for stirring the materials in the furnace and also to stir the molten metal. During the process of manufacture, the MS round melts and becomes part of the finished products namely MS billets etc. HR sheet is used by them for patching in furnace and the same gets melted during each heat of the furnace and also forms part of the finished goods. The final product MS billet comes out continuously from the furnace and the same is to be cut to appropriate lengths for the convenience of handling and marketing and sale and for this cutting, they require oxygen gas. They also procured a Chartered Engineer certificate dated 15/11/2015 and the same was filed along with the reply to show cause notice filed in or about 15/12/2015. The Show Cause Notice was adjudicated in contest and the proposed disallowance of Cenvat credit Rs.2,55,016/- was confirmed along with interest and further equal penalty was imposed under Rule 15 to of Cenvat Credit Rules, 2004 read with section 11 AC of the Act.

3. Being aggrieved, the appellant preferred appeal before learned Commissioner (Appeals) who vide the impugned order was pleased to reject the appeal and confirmed the adjudication order denying Cenvat credit.

4. Being aggrieved, the appellant is before this Tribunal. The learned counsel appearing for the appellant draws my attention to the definition of input as amended, with effect from 01/04/2011, wherein input has been defined as – "all goods used in the factory by the manufacturer of the final product”. The learned counsel further urges that it is not the case of the Department that they have not used the items in question in the factory of production. It is further no case of Revenue that these items in question have not been received in the factory of production. The courts below have denied the Cenvat credit without there being a finding that the goods in question have not been used in relation to manufacture of their final products. The appellant had filed sufficient evidence and demonstrated that they have utilised the inputs in question in the manufacture of final products which are all in the nature of consumables. Accordingly, he prays for allowing the appeal with consequential benefits.

5. The learned AR for the Revenue have relied on the impugned order.

6. Having considered the rival contentions and on perusal of the record, I find that the courts below have not considered the issue in the right perspective and by a non-speaking order, the Cenvat credit was disallowed. I find that the appellant satisfies the requirement of taking credit of input as defined in Rule 2(k) of Cenvat Credit Rules, 2004 as they have utilised the inputs in dispute in their factory of production. Accordingly, I allow this appeal and set aside the impugned order. The appellant will be entitled to consequential benefits in accordance with law.

(dictated and pronounced in the open court)

(Anil Choudhary)
Member(Judicial)

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