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

Date of hearing/decision: 09.01.2018

Excise Appeal No. 50239 of 2017
(Arising out of order in original No. 53/PR.COMMR/IND/CEX/2016 dated 26.10.2016 passed by the Principal Commissioner, Central Excise, Indore.)

M/s National Steel & Agro Industries Ltd. Appellant

Vs.

CCE&ST, Indore Respondent

Appearance:

Sh. Dhrub Tiwari, Advocate for the appellant
Sh. M. R. Sharma, AR for the Respondent

Coram:

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

Final Order No. 50121/2018

Per: **Justice (Dr.) Satish Chandra**:

The present appeal is filed against the order in original No. 53/PR.COMMR/IND/CEX/2016 dated 26.10.2016 passed by the Principal Commissioner, Central Excise, Indore. The period of dispute is 2014-15.

2. Brief facts of the case are that the appellant is engaged in the manufacture of CR Galvanized Coils, C.R. Galvanized Sheets, CR Galvanised Color Coated Coils, and CR Galvanised Color Coated sheets falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. Appellant is also engaged in the trading of steel materials and agro products from its premises located at Indore, Mumbai, Tuticorin, Kolkata and Hyderabad.

3. The dispute in the present appeal is regarding demand under Rule 6(3)(i) of the Cenvat Credit Rules, 2004 @ 5% or 6% on account of credit of common input services exclusively used in the manufacture of dutiable goods as well as trading activity (exempted services).

4. With this background, we heard Sh. Dhrub Tiwari, ld. Advocate for the appellant and Sh. M. R. Sharma, ld. AR for the Revenue.

5. After hearing both sides and on perusal of the material available on record, it appears that the identical issue has come up before the Tribunal in assessee's own case (Appeal No. E/50379/2016 (Final Orer No. 57888/2017 dated 09.11.2017) where it was observed that-

> *"4. After hearing both sides and on perusal of the material available on record, it appears that an identical issue has come up before the Hon'ble Supreme Court in the case of Commissioner of Central Excise & Customs vs. Precot Meridian Ltd. -2015 (325) ELT 234 (SC), wherein the reversal of credit was allowed after a period of almost six years by observing that:*
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> > *"2. As mentioned above, this Notification was issued on 28.2.1999. The product of the respondent is covered by the description of goods at Serial No. 133 of the Table annexed with the General Exemption Notification. The assessee, however, had utilised the MODVAT credit in the previous two years prior to 28.2.1999. As per the assessee, after the issuance of this notification, no such MODVA T credit which was utilised was returned or paid back on 19.1.2005. In this scenario, question arose as to whether the assessee fulfils the aforesaid condition in order to become eligible to get the benefit of the Exemption Notification.*
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> > *3. We note that five-Member Bench of the Tribunal in the case of 'Franco Italian Co. Pvt. Ltd. vs. Commissioner [2000 (120) ELT 792 (T.LB)] had taken the view that even if the MODVAT credit was utilised but, thereafter, refunded, it would amount to not utilising the said MODVAT credit. Same view has been taken by the High Court of Allahabad in 'Hello Minerals Water (P) Ltd. vs. Union of India [2004 (174) ELT 422 (All.)].*

> *4. On a specific query put by the Court, we were informed that as far as the aforesaid two judgments are concerned, they were accepted by the Department and no appeal was filed there against. In the impugned judgment, the Tribunal has decided the issue in favour of the assessee relying upon the aforesaid two decisions."*

> *5. By following the ratio laid down by the Hon'ble Supreme Court (supra), we find no reason to sustain with the impugned order and the same is hereby set aside."*

6. By following our earlier decision (supra), we find no reason to sustain the impugned order and the same is hereby set aside.

7. In the result, the appeal filed by the assessee-appellant is allowed.

(Dictated and pronounced in the open Court).

(V. Padmanabhan) Member (Technical)	(Justice (Dr.) Satish Chandra) President

Pant