

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL
New Delhi**

PRINCIPAL BENCH-COURT NO.-II

Excise Appeal No. 51962 of 2018-[SM]

(Arising out of Order-in-Appeal No. 40(NG)/CE/JPR/2018 dated 22.03.2018 passed by Commissioner of CGST & Central Excise (Appeals) Jaipur)

M/s Agam Cement Products P Ltd.
C-4, RIICO Industrial Area
Kaladera, Teh-Chomu, Jaipur.

Appellant

Versus

**Commissioner of CGST &
Central Excise (Appeals)**
NCR Building, C-Scheme
Jaipur-302005

Respondent

Appearance

Shri Abhishek Jaju, Advocate for the appellant

Shri P R Gupta, Authorized Representative for the respondent

CORAM: **Hon'ble Shri Anil Choudhary, Member (Judicial)**

Final Order No. 50847 of 2019

Date of hearing/Decision: 28.05.2019

Per Anil Choudhary:

The issue in this appeal is, under the facts appellant is manufacturer of AC pressure pipes and couplers falling under heading No. 68114090 of 1st Schedule to CETA, whether they are required to reverse the input credit taken on purchase of finished/semifinished AC pressure pipes, which they have cleared on payment of duty.

2. The brief facts are that the appellant is registered with Central Excise Department for manufacture of AC pressure pipes and couplers. Notification No. 5/2006-CE dated 1st March 2006, provides for exemption of duty from more than the rates specified in the table to the notification. Further at serial No. 9 of the said table provides for goods falling under Chapter 68—goods in which not less than 25% by weight of fly ash or phosphate gypsum or both have been used. In such case the rate prescribed the table is 8% subject to the condition No. 3, which provides – the manufacturer shall maintain proper account in such form and in such manner as the Commissioner of Central Excise having jurisdiction may specify in this behalf for receipt and use of fly ash or phosphate gypsum or both and also file a monthly return in the form and manner, as may be specified.

3. In order to meet their supply orders which sometimes exceeded their manufacturing capacity, the appellant procured semifinished/finished AC pressure pipes from other manufacturers. On such procurement they took Cenvat credit and after the quality testing at their end, cleared the same to their customers on payment of duty. In the course of audit during June, 2010 it was observed that appellant have availed the benefit of concessional rate of duty under the aforementioned Notification No. 5/2006 -CE on clearance of their goods, which were procured by them from other manufacturers. It appeared to revenue upon enquiry that the appellant have procured finished AC pressure pipes in the garb of semi-finished AC pressure pipes and have cleared the same as such on payment of output tax. It appeared to revenue that such activity of procuring finished/semifinished AC pressure pipes and

clearing the same after the process of inspection and testing does not amount to manufacture as defined in Section 2(f) of Central Excise Act. It further appeared to revenue that semi finished AC pressure pipes and couplers are neither transportable nor marketable and as such the appellant's claim that they procured the said goods in semifinished condition does not stand to reason. The statement of Authorised Signatory Mr. Kishanlal Yadav was recorded who stated that the finishing process (cutting, turning, simpering and testing) are being undertaken on the semifinished AC pipes procured by them through the suppliers. Further statement of the supplier company, namely, M/s Ganpati Asbestos Cement Private Ltd and M/s MRK Pipes Ltd was recorded through their Authorised Signatory who stated that they have facility of manufacturing and finishing of AC pipes in their factory and they have been supplying the fully finished pipes to each other so as to enable them to complete the supply obligation in time. Further comparison of purchase invoice with the sales invoices issued by the appellant revealed that they have cleared the ACC pipes as such on the same date and time, through the same vehicle which shows that no process has been carried out in the assessee's premises. For this allegation reliance was placed on input invoice of **M/s Ganpati Asbestos cement private Ltd dated 25th December 2006** which were cleared as such by the appellant under their invoice of even date through the same truck number. Similarly, pipes received from MRK pipes Ltd under cover of invoice No. 461 dated 13th August 2008, were cleared by the appellant under their invoice No. 212 of even date through the same truck number. Thus the contention of the appellant that they are doing inspection and

testing appeared to be not tenable. Accordingly, vide show cause notice dated 5th October 2011 the appellant was required to show cause as to why an amount of Cenvat Credit Rs. 21,14,240/- be not demanded and recovered under Rule 14 read with proviso to section 11(a)(1) of Central Excise act, with further proposal to impose penalty relating to the period 20th June 2006 to 7th July 2009.

4. The SCN was adjudicated on contest and the proposed demand confirmed for Rs. 21,14,240/- including cess along with equal amount of penalty under Rule 15 of CCR, 2004 read with Section 11 AC of the Act. Further interest was also demanded under rule 14 of CCR 2004.

5. Being aggrieved the appellant preferred appeal before the learned Commissioner (Appeals), who vide the impugned order was pleased to reject the appeal and uphold the adjudication order.

6. Being aggrieved the appellant is before this Tribunal. The learned counsel urges that the situation is wholly revenue neutral as they have taken the credit at the same rate on inputs so received being finished/semifinished pressure pipes and have cleared the same at the same rate of output tax. Secondly, in the statement recorded of the authorised signatory of the appellant, it has been stated categorically that after receiving the AC pressure pipes from other manufacturers they are undertaking the process of cutting, turning, simpering and testing, which amount to manufacture, as per the definition of manufacture in section 2(f) of the Central Excise Act. Even for arguments sake in some cases where they

have received finished AC pressure pipes and they have cleared the same as such on payment of output tax, the same amounts to reversal of Cenvat Credit.

7. The learned AR for revenue have relied on the impugned order and further draws my attention to the finding of the Commissioner(Appeals) wherein it is been observed with example as hereinabove noticed, that the AC pressure pipes procured from other manufacture were cleared as such, on payment of output tax.

8. Having considered contentions, I find that the facts herein are squarely covered in favour of the appellant. As per the law laid down by Hon'ble Bombay High Court in **Ajinkya Enterprises-[2013(294) ELT 203(Bom)]** and by the Gujarat High Court in **Delta Corporation-[2013 (287)ELT 15]** and **Creative Enterprises-[2009 (243) ELT A-12]**. The impugned order is set aside, accordingly, the appeal is allowed with consequential benefits.

(Dictated and pronounced in open court)

(ANIL CHOUDHARY)
MEMBER (JUDICIAL)