CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
SOUTH REGIONAL BENCH AT HYDERABAD
BENCH - DB
COURT - I

Appeal(s) Involved:

E/567/2011-DB

(Arising out of Order-in-Appeal No. 23/2010-(V-II) CE dated 29/09/2010 passed by Commissioner of Customs & Central Excise (Appeals) Visakhapatnam)

Commissioner of Central Excise,
and Customs VISAKHAPATNAM-II Appellant(s)

Versus

TOSHALI CEMENTS PVT LTD Respondent(s)

Appearance:
Mr M. Guna Ranjan, A.R. for the Appellant.
Mr B.V. Kumar, Adv for the Respondent.

CORAM:

HON'BLE Mr. M.V.Ravindran, MEMBER (JUDICIAL)
HON'BLE Mr. P. Venkata Subba Rao, MEMBER (TECHNICAL)

Date of Hearing: 07/01/2019
Date of Decision: 07/01/2019

Final Order No. A/ 30031 / 2019

[Order per: M.V.Ravindran.]

This appeal is filed by the Revenue against order-in-appeal No. 23/2010-(V-II) CE dated 29/09/2010.

2. Learned A.R. submits that the issue is regarding refund of the amount of the Central Excise duty availed as CENVAT credit on the goods which were exported. It is his submission that the respondent herein obtains granulated

slag from the blast furnace of Rashtriya Ispat Nigam Ltd (RINL). The said slag comes in lump form; respondent subject the granules/slag to a process of grinding and produce ground granulated blast furnace slag (GGBFS). It is his submission that this process has been held as not amounting to manufacture by the Tribunal in the case of Andhra Cements Vs CCE Visakhapatnam [2005(188)ELT 179 (Tri-Bang) which would mean that appellant herein cannot avail CENVAT credit of the Central Excise duty paid by RINL. It is his further submission that appellant herein having not manufactured GGBFS, has not satisfied the basic ingredients of Rule 5 of the CENVAT Credit Rules for the refund of the CENVAT credit that remained unutilised as the said rule requires that there should be a manufacture of the final product which is absent in the case in hand.

3. Learned counsel appearing on behalf of the respondent on the other hand submits that identical issue for the subsequent period was decided by this Bench in Final order No. A-30246/2018 dated 19.02.2018 and the said order has been accepted by the department and refund has been granted by the adjudicating authority by order-in-original. No 16/2011 dated 10.02.2011.

4. On a careful consideration of the submissions made by both sides, we find that the facts are not in dispute and are same as was in respondent's own case which was decided by the Tribunal (one of us Shri M.V. Ravindran was a Member) by Final order No. 19.02.2018. It is also not in dispute that the period involved in the current appeal by the Revenue is prior to the period which was considered by the Bench in Final order dated 19.02.2018.

5. We find that the issue being covered for the subsequent period by the order of this Bench, we hold that the said order is applicable in the case in hand in its full force and it has to be held that the impugned order which grants refund to the respondent is correct and does not require any interference.

6. We do not find any reason to deviate from the view already taken by the Bench in identical case of the very same respondent for the subsequent period. Accordingly the impugned order is upheld and the appeal is rejected.

(Operative portion of order pronounced
in open court on conclusion of the hearing)

P. Venkata Subba Rao
MEMBER (TECHNICAL)

M.V.Ravindran
MEMBER (JUDICIAL)

Neela Reddy