IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL,
EAST REGIONAL BENCH : KOLKATA

Ex.Appeal Nos.76138 to 76140/18

(Arising out of Order-in-Original No.62/CCE/CEX/RKL//2017-18 dated 23.02.2018 passed by the Commissioner of Central Excise, Rourkela)

M/s Western Bitumen Indus. Pvt. Ltd.
Shri Gaurav Santosh Vaid, Ex.Director,
Shri Vipin Gupta, Director

Applicant (s)/Appellant (s)

Vs.

Commr. of Central Excise & S. Tax, Rourkela

Respondent (s)

Appearance:

S/Shri Kartik Kurmi & S. B.Sharma, both Advs. & Shri R. Agarwal, C.A. for the Appellant (s)
Shri S. S. Chattopadhyay, Supdt. (A.R.) for the Revenue(s)

CORAM:
HON'BLE SHRI JUSTICE (DR.) SATISH CHANDRA, PRESIDENT
HON'BLE SHRI V. PADMANABHAN, TECHNICAL MEMBER

Date of Hearing : 03.05.2018
Date of Pronouncement : 04.05.2018

ORDER NO - **FO/A/75925-75927/2018**

Per Dr. Satish Chandra :

The present appeals have been filed against the Order-in-Original No.62/CCE/CEX/RKL//2017-18 dated 23.02.2018 passed by the Commissioner of Central Excise, Rourkela.

2.1 Briefly stated the facts of the case are that the main appellant is registered under the Companies Act, 1956. The appellants are engaged in the manufacture of Coal Tar Pitch of various grades like, Dehydrated Coal Tar and by-products such as Heavy Creosote Oil, Light Creosote Oil, Napthalene etc., which attract Central Excise duty under Chapter 27 of the First Schedule to the Central Excise Tariff Act,

1985. The raw materials are Crude Oil Tar (partially distilled), S. M. Pitch/G.R.Pitch/M.Pitch and various grades of coal tar pitch, which are also attracted Central Excise duty.

2.2 The appellant procured their inputs maily from Public Sector Undertakings, like, SAIL, RSP, Bhilai Steel Plant and other manufacturers, like, Tata Steels, M/s Himadri Speciality Chemical Ltd. and so many. In the process of the manufacture of coal tar pitch from crude coal tar, involved process of (i) Dehydration and (ii) Distillation.

2.3 A search was conducted at the business premises of the assessee on 23.02.2015. The statements of Shri Yasobanta Behera, Manager (Accounts) ;, Shri Pawan Kumar Choudhury, General Manager ; and Shri Vipin Gupta, Director, were recorded on different dates, but later, they have retracted their statements. It is the allegation of the Department that during the period from April, 2012 to November, 2013 ; April, 2014 to February, 2015, the factory was closed, but the appellant has claimed the cenvat credit on the inputs, which was denied by the Department. Penalties were imposed on the appellant as well as its officers. Being aggrieved, the appellants have filed the present appeals.

3.1 With this background, Shri Kartik Kurmy, ld.Counsel for the appellants, submits that the appellants are engaged in the manufacture of final product i.e. coal tar pitch of various grades, which attracts central excise duty. The raw materials are Crude Oil Tar (partially distilled), S. M. Pitch/G.R.Pitch/M.Pitch and various grades of coal tar pitch, which also attracts Central Excise duty. It is the submission of the ld.Counsel that the raw material was purchased from the Public Sector Undertaking or the reputed supplier. The payments were made by the A/c Payee Cheques. He further submits that the statement of Shri Yasobanta Behera, Manager (Accounts) and ShriPawan Kumar Choudhary, General Manager, were taken in the presence of the Police Officers. No opportunity of the cross-examination was provided in accordance with Section 9D of the Central Excise Act, 1944. Statement of Shri Bipin Gupta, Director was also recorded. The statements were recorded in the presence of the police officers. So, the shadow of authority/police, was in the existence. Thus, the statements were not voluntarily taken. It was under the threat, coercion.

3.2 It is also the submission of the ld.Counsel that the appellant has paid more duty than credit taken. He submits that the appellant has paid excess duty of Rs.32,61,934/-, which is accepted by the Department without any dispute. Under the circumstances, even if, the process carried out are held to be not manufacture, no further demand can be made as by payment of duty on said goods. The appellant has already reversed the credit. For this purpose, he relied on the following decisions :

(i) CCEx. Vs. Rane NSK Steering Systems Ltd. : 2009 (13) STR 327 (P & H) ;

(ii) CCEx. Vs. Narmada Chematur Pharmaceuticals Ltd. : 2015 (179) ELT 276 (S.C.).

3.3. According to the ld.Counsel for the appellant, the dispute in the instant case is limited to the origin of the goods from supplier to buyers under cover of excise invoices and on payment of duty as mentioned in Para 6.7 and 6.7.6 of the impugned order. It is not the case of the fake invoices.

3.4 The ld.Counsel for the appellant continues to argue by mentioning that the appellant was using “Specialized Tankers” having inbuilt Diesel Generator with electric heating facility and insulated tracing coils all around its body with automatic temperature control mechanism to activate the generator and temperature indicator to achieve the softening point and desirable temperature as mentioned in Para 6.7.7 of the impugned order.

3.5 It is the submission of the ld.Counsel that the thermal process carried out by them in the “Specialized Tankers” for achieving the softening point and deliverable temperature as per specification of the customer, for its marketability comes within the inclusive definition of manufacture under Section 2 (f) of the Central Excise Act, 1944. For this purpose, he relies on the ratio laid down in the following case laws :

(i) Prestige Engineering (India) Ltd. Vs. CCEx.: 1994 (73) ELT 497 (SC) ;

(ii) Flex Engineering Ltd. Vs. CCEx. : 2012 (276) ELT 153 (SC);

(iii) Regional Director Employees State Insurance Corpn. Vs. Ram Chander : 1987 (32) ELT 231 (SC) ;

(iv) CCEx., Vs. Prem Conductor : 2008 (222) ELT 145 (Tri.-Ahmd.).

3.6 According to the ld.Counsel for the appellants, “Specialized Tankers” were received in their factory as a matter of fact. In any case, they received the inputs in the “Specialized Tankers” to satisfy the test of receipt of the inputs in the factory within the expanded meaning of “factory” under Section 2 (e) of the Act. Thus, he draws our attention that “Specialized Tankers”, in which a part of the process for completion of manufacture of finished goods is carried out, is a factory.

3.7 According to the ld.Counsel, under Rule 3 (1) of the Cenvat Credit Rdules, 2004, the requirement is receipt of the input in the factory where process of manufacture is going on. The requirement is not receipt of the input in registered factory.

3.8 The ld.Counsel further submits that the appellants had purchased the said inputs from M/s Rastriya Ispat and other Companies and the same was directly supplied the said inputs without bringing the same into their factory during the period January, 2015 to February, 2015 to M/s HCIL for job work in accordance with Notification 214/86-CE dated 25.03.1986 read with Rule 4 (6) of the Cenvat Credit Rules, 2004 for conversion into liquid coal tar pitch under due intimation to the Department vide their letters dated. 30.09.2014 & 17.11.2014. Accordingly, the inputs supplied to the job worker, M/s HCIL, were received back by them in “Specialized Tankers” after conversion into liquid coal tar pitch within 180 days as stipulated under Rule 4 (5)(a)(i) of the Cenvat Credit Rules, 2004 and the same were supplied to M/s NALCO. Lastly, he prays that the impugned order may kindly be set aside.

4. On the other hand, Shri S. S. Chattopadhyay, ld.A.R. for the Revenue, has justified the impugned order. He submits that the factory was closed. The cenvat credit was claimed falsely on the inputs. In the factory, sufficient electricity consumption was not made. The officer of the Company have stated in their statement that the factory was closed from April, 2012 to November, 2013 and from April, 2014 to 23.02.2015 and no production was made, but fact remains that the factory was opened from November, 2013 to March, 2014. It is the submission of the ld.A.R. for the Revenue, that no Pollution Certificate has been obtained. No raw material was received and there was no production and clearance of the finished goods during the said period. He also explains the process of manufacturing of the final products. Accordingly to him, as per the statement of Shri Vipin Gupta and Shri Gourav Santosh Vaid, both Directors, they are involved in issuance of fake invoices, false and fabricated entries in the raw material. Lastly, he has justified the impugned order.

5. We have heard both the parties at length and have gone through the bulky material on record. From the record, it appears that the appellant has purchased the inputs, mainly from the Public Sector Undertaking, like, SAIL, RSP, Bhilai Steel Plant and other manufacturers, like, Tata Steels, M/s Himadri Speciality Chemical Ltd.. The payment was made through Banking Channel. The factory was

closed from April, 2012 to November, 2013 & April, 2014 to February, 2015. Thus, the factory was functional for the month of December, 2013 to March, 2014. It was stated that during this period, the appellant obtained the inputs after paying the Central Excise duty and supplied the same to the job worker, M/s HCIL, fromwhere, it was received back by them in "Specialized Tankers" after conversion into liquid coal tar pitch within 180 days as stipulated under Rule 4 (5)(a)(i) of the Cenvat Credit Rules, 2004 and the same were supplied to M/s NALCO, in the said "Specialized Tankers" wherein the incidental or ancillary processes for completion of the process of manufacture were undertaken as elaborated above. The said clearance were made at the time of clearance as per excise invoices duly certified by statutory auditors. In terms of Notification, 214/86-CE dated 25.03.1986 read with Rule 4(5)(a)(i) of the Cenvat Credit Rules, 2004, the appellants had received the job work goods within 180 days, which fact is also evident from the record. The inputs were supplied to the job worker and the same were received back in the processed goods with such details as dates of supply, date of receipt, challan/invoice nos, vehicle no., quantity supplied, quantity received back, no. of days within which returned by job worker, which is duly certified by statutory auditor.

6. It may be mentioned that in the process of manufacture of final product of Coal Tar Pitch from Crude Coal Tar, two stages are required, namely, (i) Dehydration and (ii) Distillation. Dehydration is the process by which Crude Coal Tar is heated in the distill at a

temperature of 200° C and water contents are removed and in the process, Dehydrated Coal Tar is manufactured. The process of Dehydration is a simple heating process which is carried out in the Distillation process. This was done in the factory of M/s HCIL, a job worker. After the Dehydration, the process of manufacture is continued during the process of Distillation under vacuum in which Coal Tar Pitch emerges along with by-products such as Creosote Oil, which are separated with rise in temperature in the Distillation vessel. This process was continued to be performed in the "Specialized Tankers" at the second stage. Thereafter, the final products were delivered to the consumers, who are either Public Sector Undertakings or reputed Companies subject to Excise duty.

As per Section 2 (e) of the Central Excise Act, 1944, the word **"factory",** does not mean the registered factory premises. A part of the factory may be in the "Specialized Tankers" as the case is in the instant case. Thus, with the help of "Specialized Tankers", the appellant is able to perform the process of manufacture. As per record, the "Specialized Tankers" having inbuilt Diesel Generator with electric heating facility and insulated tracing coils all around its body with automatic temperature control mechanism to activate the generator and temperature indicator to achieve the softening point and desirable temperature as mentioned in Para 6.7.7 of the impugned order.

In the instant case, during the period under consideration, the manufacturing process was continuing with the help of job worker as well as in the "Specialized Tankers". The raw material, after the payment of duty, was supplied to the job worker.

7. The raw material supplied to the job worker, M/s HCIL or other reputed companies, were received back by them in "Specialized Tanker". When the excise duty was paid on the final product, then, cenvat credit is permissible as per ratio laid down by decision of the Tribunal in the case of M/s Himadri Speciality Chemicals Ltd. & others Vs CCEx., Kol.IV (Vide Order No.F/O/75585-75587/2018 dated 21.03.2018), wherein it was observed that essential ingredients for availment of cenvat credit are the discharge of duty liability by the appellants. In the instant case, the duty liability has been discharged on the said product, which was accepted by the Department. When the duty has been accepted on the final product, the appellant is entitled for cenvat credit on inputs.

8. In the light of the above discussions and by considering the totality of the facts and circumstances of the case, we find no reason to sustain the impugned order and the same is hereby set aside.

9. In the result, the appeals filed by the appellants are allowed.

(Pronounced in the open court on 04.05.2018)

Sd/
(V.Padmanabhan)
Member (Technical)

Sd/
(Justice Dr. Satish Chandra)
President

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