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

Ex.Appeal No.75154/16

Arising out of Order-in-Appeal No.36/Kol-V/2015 dated 03.11.2015 passed by Commr. (Appeals) of Central Excise, Kolkata

M/s Gontermann Peiperss (I) Ltd.

...APPELLANT(S)

VERSUS

Commr. of Central Excise, Kol.V

RESPONDENT (S)

APPEARANCE

Shri B. N. Chattopadhyay, Consultant for the Appellant (s)
Shri A. Roy, Supdt. (A.R.) for the Revenue

CORAM:

SHRI P. K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

DATE OF HEARING : 15.03. 2018
DATE OF PRONOUNCEMENT : 09.05.2018

ORDER NO - **FO/A/76042/2018**

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against Order-in-Appeal No.36/Kol-V/2015 dated 03.11.2015 passed by Commr. (Appeals) of Central Excise, Kolkata.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of Steel Rolls for Rolling Mills falling under chapter 84 of the First Schedule to the Central Excise Tariff Act, 1985. A show cause notice dated 07.11.2011 was issued to the appellant alleging wrongful availment of Cenvat credit of Rs.4,11,066/- on goods that did not qualify as 'Capital Goods' and inputs that had no relation

to the manufacture of the final product. In reply to the Show cause notice, the appellant submitted that they had already reversed the Cenvat credit of Rs.1,90,643/- along with interest and believed that they were eligible to avail credit of the remaining amount. The adjudicating authority confirmed the demand of Rs.4,11,066/- along with interest and imposed equal amount of penalty. The Commissioner (Appeals) upheld the adjudication order. Hence, the present appeal.

3. Heard both sides and perused the appeal records.

4. The ld. Consultant for the appellant submitted that credit must be allowed on products such as angles, channels, HR coils, plates, etc. He further stated that the inputs in question are thermocouples, cables, water treatment chemicals, MS angles, steel tubes, pipes, etc., all of which have been used in or in relation to the manufacture of the final products. He also submitted that the allegation in the impugned order that the appellant had failed to produce documentary evidence which had led to the denial of credit on certain inputs is ill-founded. The appellant had stated the required evidence in their reply to the show cause notice as well as the appeal filed before the Commissioner (Appeals).

5. The ld. AR for the Revenue reiterated the findings of the lower authorities.

6. It is pertinent to note that the judgment of Tribunal in the case of Vandana Global Ltd. reported as 2010 (253) ELT 0440 Tri.-LB had held that the definition of 'inputs' does not include cement, angles,

TMT bars, etc. However, this judgment of the Tribunal has been disapproved by the Hon'ble Calcutta High Court in the case of Surya Alloy Industries Ltd. v. Union of India reported as 2014 (305) ELT 47 (Cal.). Therefore, credit on the impugned goods cannot be denied to the appellant.

7. Further, I find that the usage of various iron and steels items is to be analysed in light of the decision of the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills Ltd. reported as 2010 (255) ELT 481 (SC). In this judgment, the Hon'ble Supreme Court has referred to the 'user test' outlined in the case of CCE, Coimbatore v. Jawahar Mills reported as 2001 (132) ELT 3 (SC), which lays down the ratio in determining whether particular goods could be categorized as capital goods or not.

8. The ld. AR for the Revenue had relied upon the decision of the Hon'ble Supreme Court in the case of Madras Cement Ltd. v. CCE reported as 2010 (254) ELT 3 (SC), wherein the assessee had failed to identify the machinery for which the input goods had been used. However, this decision of the Hon'ble Supreme Court is not applicable to the instant case.

9. In view of the above discussion, the appeal filed by the appellant is allowed.

(Pronounced in the open Court on 09.05.2018)

Sd/

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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