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

Ex.Appeal No.77052/17

Arising out of Order-in-Original No.17/Additional Commissioner/CE/Haldia/Adjn./2016 dated 28.04.2016 passed by Commr. of Central Excise, Haldia Commissionerate, Kolkata

M/s Rashmi Ispat Ltd.

…APPELLANT(S)

VERSUS

Commr. of Central Excise & S.Tax, Haldia

RESPONDENT (S)

APPEARANCE

Shri S. P. Siddhanta, Consultant for the Appellant (s)
Shri S. S. Chattoapadhyay, Supdt. (A.R.) for the Revenue

CORAM:

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

DATE OF HEARING : 27.03. 2018
DATE OF PRONOUNCEMENT : 22.05.2018

ORDER NO. FO/A/76117/2018

Per Shri P. K. Choudhary :

This is an appeal filed by the Appellant against Order-in-Original No.17/Additional Commissioner/CE/Haldia/Adjn./2016 dated 28.04.2016 passed by Commr. of Central Excise, Haldia Commissionerate, Kolkata.

2. Briefly stated the facts of the case are that the appellant is engaged in the manufacture of sponge iron. The appellant had availed Cenvat credit on 'Tipper Trucks' classifiable under chapter subheading 87042319 of the first schedule to the Central Excise Tariff Act, 1985. A

show cause notice dated 27.04.2015 was issued to the appellant alleging irregular utilization of Cenvat credit of Central Excise duty amounting to Rs.5,31,169/- in contravention to the provisions under Rules 2,3 and 4 of the Cenvat Credit Rules, 2004. The adjudicating authority confirmed the demand proposed in the show cause notice along with interest and penalty. On appeal, the Commissioner (Appeals) found that the demand of Rs.3,61,760/- was unsustainable and accordingly, he reduced the demand to Rs.1,69,409/-, which according to the impugned order is to be recovered with interest and penalty. Aggrieved by the order of the Commissioner (Appeals), the appellant filed this appeal before the Tribunal.

3. Heard both sides and perused the appeal records.

4. The ld. Consultant for the appellant submitted that the trucks in question are exclusively used within the factory of production for loading/shifting of various raw material. He also submitted that the show cause notice dated 27.04.2015 was issued after the second audit conducted on 12.01.2012, and no demand notice had been raised pursuant to the first audit conducted on 13.09.2011 and 14.09.2011. He relied upon the following decisions to show that credit was admissible on material handling machinery:

1. Jindal Stainless Steel v. CCE & Cus [2009 (245) ELT 244 (Tri.-Bang)]
2. ACC Ltd. v. CCE, Raipur [1999 (108) ELT 169 (Tri.-Del)]
3. India Cement Ltd. v. CCE, Hyderabad [2004 (178) ELT 194 (Tri.-Bang.)]

5. The ld. AR for the Revenue submitted that the Cenvat credit could not be allowed on the impugned goods as it did not qualify as

'input' as per the definition under Rule 2(k) of the Cenvat Credit Rules. He further stated that the appellant had not informed the department of such availment of Cenvat credit as the monthly returns submitted by the appellant in the form of ER-1 reflected the consolidated figure of the credit taken and no specific description was recorded.

6. On perusal of records, I find that this Tribunal in the case of Tata Steel Ltd. v. CCE, JSR [2012 (282) ELT 459 (Tri.-Kol)] has held that 'coke transfer cars' used for the transportation of coke from oven to furnace is a material handling equipment without which coke could not be transferred to the furnace, and is eligible for Cenvat credit. Further, the contention of the Revenue that they were unaware of the availment of credit by the appellant on the impugned goods cannot be accepted. The department had conducted multiple audits at the factory premise of the appellant and the appellant was regularly filing the statutorily mandated monthly returns.

7. Therefore, I am of the considered view that the impugned goods are eligible for Cenvat credit in the instant case. The trucks play a vital role in the movement of raw material within the factory and without these trucks the movement of material would be adversely impacted which would affect the manufacture of final product.

8. In view of the above discussion, the impugned order is set aside and the appeal filed by the appellant is allowed.

(Pronounced in the Court on 22.05.2018)

Sd/
(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

mm