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

Appeal No.EX/326/2010

(Arising out of order-in-appeal No. 06/ST/BBSR-II/2010 dated 08.02.2010 passed by the Commissioner (Appeals), Central Excise & S. Tax, Bhubaneswar)

M/s MAA TARINI INDUSTRIES LTD.

…APPELLANT(S)

VERSUS

Commissioner of Central Excise & S. Tax, Bhubaneswar-II

…RESPONDENT (S)

APPEARANCE
Shri Kartik Kurmi & S. B. Sharma, Advocate for the Appellant (s)
Shri. S. Mukhopadhyay, Supdt. (AR) for the Respondent (s)

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

Date of Hearing/Decision:-09.04.2018

ORDER NO. FO/76363/2018

Per Shri P. K. Choudhary :

Briefly stated the facts of the case are that the appellant is engaged in the manufacture of sponge iron. The appellant purchased iron ore and coal from third parties, which contained iron ore fines and coal fines respectively. It seems that such iron ore fines and coal fines are required to be separated, which is an essential part of the process of manufacture of sponge iron. The appellant sold the separated iron ore fines and coal fines. A show cause notice dated 27.05.2009 was issued to the appellant proposing recovery of CENVAT Credit of Rs.6,68,448/- availed on GTA service for inward transportation of iron ore and coal as the iron ore fines and coal fines had not been used in the manufacture of the final product. The adjudication authority confirmed the demand of Rs.6,68,448/- along with interest and imposed penalties under Sections 77 and 78 of the Finance Act, 1994. On appeal, the Commissioner (Appeals) modified the adjudication order to the extent that he set aside the penalty under Section 77 of the Act.

2. The ld. Counsel for the appellant submitted that the iron ore fines and coal fines had not been manufactured by the appellant but were generated in the process of manufacture, and hence, the appellant has not infringed the provisions of Rule 2(l) of the Cenvat Credit Rules, 2004. He relied upon the following case laws:

(i) Punjab Steels v. CCE [2011 (21) STR 5 (P&H)]

(ii) Seven Star Steels Ltd. v. CCE [2013 (30) STR 532 (Tri.-Kol)]

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

4. Heard both sides and perused the appeal records.

5. On perusal of records, I find that the iron ore fines and coal fines generated in the process of manufacture, are nothing but waste products. I find that the Revenue has relied upon the decision of this Tribunal in the appellant's own case vide Order No. FO/77839-77842/2017, which is in favour of the Revenue. However, I find that this decision is not applicable to the facts of the instant case as the Commissioner (Appeals) has decided the issue on merits in the instant case

6. I find the Tribunal in the case of Seven Star Steels Limited (Supra) on the identical issue allowed the appeal of the assessee as under :

> "***5.*** *Heard both sides and perused the records. I find that the appellants had procured iron ores during the period April 2007 to March, 2009, which were used in the manufacture of their final product, namely, sponge iron. In bringing the said iron ores, which were used as input, the appellants had paid service tax on GTA services. Consequently, they had availed Cenvat credit on the amount of service tax paid on GTA*

service as the same satisfies the definition of input service prescribed under Section 2(l) of Cenvat Credit Rules, 2004. During the course of manufacture of sponge iron, the said iron ore was subjected to the process of screening and after completion of the said process, iron ore fines were generated. It is the case of the Revenue that these iron ore fines were not used in the manufacture of their final product, namely, sponge iron, but were sold in the market. Therefore, since the iron ores were sold as such without being used in the manufacture of products, proportionately the Cenvat credit availed on GTA services for bringing iron ore to the factory were required to be reversed under Rule 3(5) of Cenvat Credit Rules, 2004. I do not find merit in the said allegation of the Department on two counts; firstly, the input iron ores after being brought to the factory, were subjected to the process of screening and process of screening as explained by their ld. Advocate, would definitely a part of the manufacturing process. After the iron ores are subjected to the process of screening, the same could not be called as input as such. Secondly, I find that Rule 3(5) of the Cenvat Credit Rules, 2004, is directed for reversal of Cenvat credit on inputs or capital goods and the same is not applicable to the credit availed on the "input services". In this connection, the Hon'ble High Court of Punjab & Haryana in the case of Commr. of Central Ex., Chandigarh-I v. Punjab Steels (cited supra), had observed at Para 10, which reads as under :

> *"10. Be that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(1) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the Finance Act, 1994. Rule 3(5) of the Rules only talks about the Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5, on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is*

stated in the plain language. Words cannot be added or substituted so as to give a particular meaning. ......"

6. *The same view was taken by this Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. v. Commr. of Central Excise, Chennai (cites supra). The relevant portion of the Order of the Tribunal in the case of Chitrakoot Steel & Power Pvt. Ltd. is reproduced below :*

"5. On a careful study of the statutory provisions, it is seen that when the credit availed inputs or capital goods are removed from the factory of the assessee, sub-rule (5) of Rule 3 of the Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit. There is no such provision to reverse credit of service tax availed in relation to such inputs or capital goods when removed from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or utilized wrongly. In the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. No provision exists in the Finance Act, 1994, which would render utilization of such credit erroneous for the reason that some of the inputs, transport of which yielded GTA service tax credit are returned as not suitable. The credit availed is anyway used to pay duty on the finished goods. In the circumstances, I find that the impugned order sustaining the demand of service tax and education cess to be not sustainable and accordingly, vacate the same."

The said principle has been followed in M/s. Sponge Udyog Pvt. Ltd.'s case (cited supra). In the light of the above consistent view, I do not find merit in the order of the ld. Commissioner (Appeals). Consequently, the same is set aside and the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

7. In view of the above decision the impugned Order is set aside and the appeal filed by the appellant is allowed.

(Operative part of the order all ready pronounced in the open court)

S/d.

(P. K. CHOUDHARY)
MEMBER (JUDICIAL)

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