IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH: KOLKATA

Appeal No. E/75370/18 & C. O No. 75500/18

(Arising out of Order-in-Appeal No. 46/HAL/CE/2017-18 dated 31/10/2017 passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata-II.

Commissioner of CGST & Central Excise, Haldia Commissionerate

Appellant (s)

Vs.

M/s. Kamaldeep Ispat Pvt. Ltd.

Respondent (S)

Appearance:
Shri S. S. Chattopadhyay, Suptd. (A. R.) for the Revenue
Shri Arun Kanti Bhattacharjee for the Respondent (s)

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

Date of Hearing: -25.04.2018
Date of Pronouncement: 23-07-2018
Order No. F/76471/2018

PER SHRI P.K.CHOUDHARY

Briefly stated the facts of the case are that the Respondent assessee is a manufacturer of Rolled Articles of Steel such as Steel Round, Steel Flat, Steel Square, etc. A Show Cause Notice dated 02/09/2014 was issued for disallowing and recovery of Cenvat Credit of Rs. 24,65,061/- along with interest and to impose penalty. The Adjudicating Authority disallowed and ordered the recovery of Cenvat Credit as proposed in the SCN along with interest and also imposed penalty of equal amount under Rule 15(2) of the Cenvat Credit Rules, 2004, read with Section 11 AC of the Central Excise Act, 1944. On appeal, the Ld. Commissioner (Appeals) allowed the appeal both on merits as well as on limitation. Hence, Revenue is in appeal before the Tribunal.

2. The Ld. DR reiterates the grounds of appeal and submits that the Ld. Commissioner (Appeals) has failed to appreciate that the process involved in the transformation of the C. C. Billets to C. C. Billets (Processed) was mere change in dimension by cutting, sizing and passing through rolls without any change in the basic character, chemical composition or end use. He further submits that Cenvat Credit can only be taken on excisable inputs, capital inputs and input services.

3. Ld. Consultant appearing on behalf of the Respondent assessee reiterates the grounds of Cross Objection and submits that the Adjudicating Authority has traversed beyond the scope of the Show Cause Notice in confirming the demand against the appellant. He further submits that the transfer documents were duly supplied and the payment vouchers of local transporters were also produced. But the fact was totally discarded by the Adjudicating Authority. Since the Show Cause Notice is the foundation of the entire proceeding, the Department cannot be permitted to build up a new case against the assessee.

4. Heard both sides and perused the appeal records.

5. On perusal of record, I find that there is no dispute in the present case that the goods supplied by M/s. B.M.W Industries Limited were procured by the appellant on payment of Central Excise. I also find that the Hon’ble High Court and the Tribunal have consistently

held that once the supplier of the goods has discharged the duty liability the recipient can take Cenvat Creidt of the duty paid and used the same in discharging his liability, was the dutiable final product.

6. Further, I find that Hon'ble Punjab and Hariyana High Court in the case of C.C.E., Delhi-III V. Neel Metal Products Ltd. reported in 2009 (237) E.L.T. 270 held that credit cannot be denied on the ground that activity undertaken by the supplier of input did not amount to manufacture.

7. In view of the above observations, I do not find any reason to interfere with the Impugned Order and accordingly, the same is sustained.

8. The appeal filed by the appellant is dismissed. Cross Objection is also disposed.

(Pronounced in the open court on 23-07-2018).

(P.K. Choudhary)
Member (Judicial)

Pooja