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

Appeal No. E/76242/2018

(Arising out of Order-in-Appeal No. 15/RAN/2018 dated 18.01.2018 passed by the Commissioner (Appeals) of CGST and Central Excise, Ranchi.

M/s. Sundaram Steel Pvt. Ltd.

Appellant (s)

Vs.

Commissioner of Central Excise & Service Tax, Ranchi

Respondent (S)

<u>Appearance:</u>
Shri Aprameya M. Gabhawala, CA for the Appellant (s)
Shri D. Haldar, A. C. (A. R.) for the Revenue

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

Date of Hearing: -14.08.18
Order No. FO/76523/2018

PER SHRI P.K.CHOUDHARY

The facts of the case in brief are that the appellants are engaged in the manufacturing of Sponge Iron classifiable under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985. A Show Cause Notice dated 31/12/2015 was issued alleging that the assessee had contravened the provision of Rules 2 & 3 (5B) of Cenvat Credit Rules, 2004 inasmuchas they failed to reverse Cenvat Credit of Rs. 5,08,980/- attributable to Coal and Iron Ore Fines on 13/10/2013 on which the assessee had taken credit of CVD and Service Tax paid on inward freight, which were not utilized in or in relation to manufacture of excisable final products. The Show Cause Notice proposed to demand Rs.5,08,980/- along with interest and for imposition of penalty on account of alleged suppression of facts. The Show Cause Notice also proposed to demand Rs. 8,42,255/- on account of quantities of Coal, Iron Ore and Iron Ore Fines removed as such during 2014-15 along with interest and for imposition of penalty. The Show Cause Notice also alleged wrong availment of Cenvat Credit amounting to Rs.1,50,748/- paid by them on importation of steamed Coal along with interest and imposition of penalty. It also alleged wrong availment of Cenvat Credit on Cement and H.R. Coil amounting to Rs.56,548/- and proposed to recover the same along with interest and imposition of penalty. The Show Cause Notice also proposed to recover Rs. 17,10,582 on account of Cenvat Credit alleged to have wrongly availed on the strength of photocopies of Rail Receipt without Service Tax Certificate for transportation of goods by Rail (STTG Certificate) along with interest and for imposition of penalty.

2. On the first issue, the Adjudicating Authority dropped the demand of Rs.2,27,425/- on account of proportionate input service credit. He confirmed the demand of Rs. 2,81,555/- availed on Cenvat Credit of CVD. On the second issue, the Adjudicating Authority has observed that the assessee has reversed an amount of Rs.2,33,259/- along with interest . He further, observed that appropriation of credit amounting to Rs.6,08,996/- which is an input service is not disallowed. However, he held the assessee liable to pay equal penalty on the amount of Rs.2,33,259/- which was reversed. Regarding the third issue, on the availment of Cenvat Credit of Rs.1,50,748/-, the Adjudicating Authority has recorded in the Adjudication Order, that though the assessee has reversed the credit of Rs.1,50,748/- along with interest of Rs.66,447/-

but held the assessee liable to pay equal penalty on the amount of Rs. 1,50,748/-. Regarding the fourth issue of input credit of Cement (Rs.37,988/-) and on H.R. Coil (Rs.18,560/-), the Ld. Adjudicating Authority has recorded that the assessee has reversed the credit taken on Cement along with interest. However, penalty of equal amount of Rs.37,988/- and Rs.18,560/- is imposed. Regarding the fifth issue, the Adjudicating Authority has observed that the assessee submitted STTG Certificates along with Railway Receipts amounting to Rs.16,43,914/- and held that the assessee has correctly availed credit to the tune of Rs.16,43,914/- and confirmed the demand of Rs.66,668/- along with interest and imposed penalty of Rs. 66,668/-.

3. On appeal, the Ld. Commissioner (Appeals) upheld the Adjudication Order. Hence, the present appeal before the Tribunal.

4. The Ld. Consultant appearing on behalf of the appellant assessee submits that regarding the penalties imposed amounting to Rs.2,33,259/-, Rs.1,50,748/- and Rs.37,988/- under Section 11AC, they had already deposited/reversed the said demand along with interest. They have also deposited 25% of the penalty on 14/07/2016 as imposed. The appellant was in appeal before the first Appellate Authority and now before the Tribunal.

5. The Ld. Consultant submits that on 13/10/2013 the assessee had suffered damage/loss of materials to the tune of Rs.2,39,86,048/- due to Cyclone Phailin. Loss of materials also included Coal and Iron Ore Fines on which assessee had taken and utilized credit of Central Excise Duty (paid on coal) and Service Tax paid on freight against inward transportation of Coal and Iron ore. The Show Cause Notice mentions

that the damaged goods were not used in the factory of manufacture in relation to manufacture of excisable goods. The assessee was required to reverse the proportionate credit attributable to damage quantities.

6. The Adjudicating Authority had confirmed the demand being Cenvat Credit taken on CVD amounting to Rs.2,81,555/- by applying Rule 3 (5B) of Cenvat Credit Rules, 2004. It is the submission of the Ld. Consultant that the provisions of Rule 3 (5B) does not ask for reversal of Cenvat Credit on inputs if it had not been entered in manufacturing process. Rather, it asks for reversal only if the inputs are written off in full or any provision to write off in full has been made in the books of Accounts. He made the Bench go through Para 26 and 30 of the Adjudication Order wherein the Ld. Adjudicating Authority has held that Cenvat Credit Rules, 2004 do not seek to reverse the Cenvat Credit availed on input service.

7. The Ld. Consultant strongly argued that since the credit availed on inputs, destroyed in natural calamity which includes Cyclone, need not be reversed as it does not amount to removal of goods as such. It is his submission that the assessee cannot be made to reverse the amount of Cenvat Credit availed on inputs destroyed in Cyclone by applying provisions of Rule 3 (5) of Cenvat Credit Rules, 2004. Regarding the Cenvat Credit on H.R. Coils, used in manufacture of capital goods amounting to Rs. 1,85,760/-, the Ld. Consultant submits that the assessee had furnished details of inputs (H.R. Coils) used in the manufacture of Klin/Storage Tank. The amount of Cenvat Credit availed thereon was also furnished in Form E.R.-1 and Form R.G.-23. The facts of utilization of inputs in the manufacturing of capital goods were

furnished in the periodic returns and the same were available with the Adjudicating Authority. Accordingly, there is no occasion of disallowance of Cenvat Credit availed on H.R. Coil utilized in the manufacture of capital goods/fixed assets eligible for Cenvat Credit on the ground that the details were never furnished before the Department. Regarding Cenvat Credit of input service on STTG Certificates, the Ld. Consultant submits that credit of input service has been taken on the basis of available copy of certificate submitted. It is his submission that the Railway Department is also a Central Government Agency and are beyond the control of the assessee. Since the claim of assessee is legitimate and the documents as endorsed by the Railway Department in absence of the original STTG Certificate, Cenvat Credit should be granted. The Ld. Consultant strongly argued that no penalty is leviable under the provisions of Rules 15 (2) of Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 as there was no malafide intent to evade the payment of Central Excise Duty.

8. The Ld. DR reiterates the orders of the Lower Authorities.

9. Heard both sides and perused the appeal records.

10. I find that the present appeal has been filed to contest the following demands:-

Ground No.	Particulars	Demand (Rs.)	Penalty (Rs.)
1-2	Loss of Inputs due to Cyclone	2,81,555	2,81,555
3-5	Cenvat Credit on Items used in Manufacture of HR Coils	18,560	18,560
6	Cenvat Credit not supported by valid STTG Certificate	66,668	66,668
Total		3,66,783	3,66,783

(i) Regarding the first issue of loss of inputs due to cyclone, I find that on 13/10/13, several parts of India including Bokaro (Jharkhand), where the manufacturing plant of the assessee is situated, witnessed an extremely severe cyclone Philiane. There was damage/loss of materials due to cyclone which included coal and iron ore on which the assessee has taken and utilized credit of CVD paid and Service Tax on inward transportation of coal and iron ore. The Ld. Adjudicating Authority has allowed credit on input services on Coal and Iron ore but has disallowed credit on CVD paid on whole. It is my considered view that the provision of Rule 3 (5B) does not require reversal of Cenvat Credit on inputs if it had entered the manufacturing process rather, it calls for reversal only if the inputs are written off in full or any provision to write off in full has been made in the books of alcs. There is no provision of reversal of credit availed on inputs which has been destroyed.

The Sponge Iron is a continuous process Plant and Coal is one of the basic Raw Materials required for the production of the Sponge Iron along with Iron Ore and Limestone. In order to meet out the daily production, the inputs including coal were issued and put in ready for continuous production process. Thus, it will deemed to be issued and utilized in the manufacturing process. I find that this issue is covered by the decision of the Hon’ble Bombay High Court in the case of

CCE V. Asian Paints India Limited as reported in 2015 (319) ELT 253. I also find from the records that the details of input lost by cyclone were duly furnished by the assessee in Stock Register of inputs and also the periodic returns filed with the Department. Accordingly, credit availed on inputs destroyed in natural calamity including cyclone, need not be reversed as it does not amount to removal of input as such. Inputs lost during the process of manufacture are not required to be considered for reversal of credit.

(ii) Regarding H.R. coils used in manufacture of capital goods, this Tribunal in the assessee's own case in appeal No. E/75816/2017 vide final Order No. FO/78687/2017 dated 27/12/2017, has allowed the credit on H.R. Coils used in the manufacture of capital goods. In the present case, the assessee had furnished details of input (H.R. Coils) used in the manufacture of Klin/Stroage Tank. Therefore, there is no reason to disallow Cenvat Credit availed on H.R. Coil used in the manufacture of capital goods.

(iii) Regarding Cenvat Credit of input service on the basis of STTG Certificates, I find that a total sum of Rs.17,105,82/- was claimed by the assessee as Cenvat Credit on the basis of STTG Certificate. The Adjudicating Authority allowed the credit in all the cases except for Rs.66,668/- for want of the original copy of STTG Certificate which was not available with the assessee in spite of his best efforts in obtaining the same from the South Eastern Railway Authorities. However, the Chief Commercial Manager of South Eastern Railway, Kolkata has issued statement of Service Tax for the month of August 2014, mentioning the name of the assessee as consignee wherein the amount of Service Tax of Rs.66,668/- has been detailed. The said statement has been filed by the Consultant in the course of hearing and placed on record. Considering the available document as valid and sufficient proof for availing Cenvat Credit, I do not find any reason to hold an adverse view.

11. In view of the above discussions, the Impugned order is set aside and the appeal filed by the appellant is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open court.)

(P.K. Choudhary)
Member (Judicial)

Pooja