

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

**MA (EH)-77645/18
& Ex.Appeal No.75614/18**

(Arising out of Order-in-Original No.32/CCE/CEX/RKL/2017-18
dt.01.11.2017 passed by Commr. of GST & Central Excise, Rourkela)

M/s National Aluminium Company Ltd.

Applicant (s)/Appellant (s)

Vs.

CGST & Central Excise, Rourkela

Respondent (s)

Appearance:

Shri S. C. Mohanty, Advocate for the Appellant (s)
Shri A. K. Biswas, Supdt. (AR) for the Revenue

CORAM:

HON'BLE SHRI P.K.CHOUDHARY, MEMBER (JUDICIAL)
HON'BLE SHRI V. PADMANABHAN, MEMBER (TECHNICAL)

Date of Hearing : 19.12.2018

Date of Decision : 19.12.2018

ORDER NO. MO/76056/18 & FO/A/77117/2018

Per Bench :

The present Misc.Application is for early hearing of the Ex.Appeal No.75614/2018, which has been filed against the Order-in-Original No.32/CCE/CEX/RKL/2017-18 dt.01.11.2017. The early hearing has been requested for the reason that the issue involved in the present appeal already stands decided. Further, it has been submitted that the revenue stakes involved is substantial in the order of Rs.36.00 Crores.

2. After carefully considering the reasons cited, the early hearing is allowed. With the concurrence of both sides, the appeal itself is taken up for decision.

3. The appellant is a Central Public Sector Undertaking and engaged in the manufacture of various aluminium products falling under Chapter 76 of the Central Excise Tariff Act, 1985. They have their main Smelter Plant located at Angul. For the manufacture of aluminium, principal raw material is Calcined Alumina falling under Chapter 28 of the said Tariff Act. This raw material is procured by the appellant from the appellant's own refinery complex located at Damanjodi in the district of Koraput. The raw material i.e. Calcined Alumina, manufactured in the sister unit is transferred to the appellant's unit on payment of appropriate Central Excise duty. Since no sale is involved, the Central Excise duty on the raw material is paid on the basis of valuation determined as per CAS-4 criteria. The dispute in the present case is regarding availment of cenvat credit on such raw material during the period June, 2002 to March, 2003. During this period, Rule 7 (4) of Cenvat Credit Rules, 2002, allowed the cenvat credit on inputs with the remarks "purchased by the manufacturer". The Department was of the view that cenvat credit on the raw material received from sister unit cannot be allowed since such raw materials have not been "purchased" by the appellant's unit, but has been "procured". After issue of show-cause notice dated 22.06.2007, the adjudicating authority disallowed such cenvat credit by issue of the impugned order and further, ordered for payment of interest as well as penalty. This order is under challenge in the present proceeding.

4. The appellant is represented by Shri S.C.Mohanty, Id.Advocate and Revenue is represented by Shri A. K. Biswas, Id.D.R..

5. The arguments advanced on behalf of the appellants are summarized below :

(i) The Id.Advocate submitted that there is no dispute in the present case that the inputs from the sister unit of the appellant have been duly received in the appellant's unit. Such goods have been accompanied by the invoice indicating the payment of duty. He submitted that there is no justification for denying the cenvat credit on the raw material so received, only for some technical infraction citing Rule 7(4) of the Cenvat Credit Rules, 2002. He also added that the word "Purchased" has since been substituted "Procured" by amending Notification No.13/03-NT dated 01.03.2003.

(ii) He also relied on the following case laws, wherein the issue stands decided in favour of the appellant :

(a) Exide Industries Ltd. Vs. CCE., Haldia : 2008 (226) ELT 249 (Tri.-Kol.) ;

(b) ITC Ltd. reported in 2018 (12) GSTL 308 (Tri.-Kol.).

6. The Id.D.R. justified the impugned order.

7. After hearing both sides and perusal of records, we note that the dispute is regarding availment of cenvat credit on the raw material i.e. Calcined Alumina, which has been procured by the appellant from its own sister unit situated in the district of koraput. There is no dispute regarding either the payment of duty by the sister unit or received and used of such raw materials by the appellant in the manufacture of aluminium. The objection raised by the Revenue is only on the technical ground that Rule 7 (4) of the Cenvat Credit Rules, 2002, during the disputed period, permitted cenvat credit in respect of inputs

"purchased by the manufacturer". It is further seen that the word "Purchased" has been substituted by "Procured" w.e.f.01.03.2003. On this issue, we note that an identical dispute has been considered and decided by the Tribunal in favour of the assessee. The Tribunal has taken the view that the cenvat credit will be admissible even in cases when the goods are procured. In the case of Exide Industries (supra), the Tribunal, while allowing the cenvat credit, has observed the followings :

"4.3 Relevant period involved in the proceeding was April, 2000 to March, 2002 raising aforesaid demand on the allegation that input received by one unit from its sister unit were not entitled to CENVAT credit. There is nothing on record to state whether inputs so received were not used in manufacture. Also record does not demonstrate that input had not undergone suffering appropriate duty before procurement. The order of adjudication also fails to exhibit that "purchase" is an essentiality to claim CENVAT credit under law even if the term "procurement" being substituted in Rule 7(4) of CENVAT Credit Rules, 2002. There is no doubt that Notification No. 13/03, dated 1-3-2003 has substituted the word 'procured' for the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 w.e.f. 1-3-2003. But Notification No. 27/2000, dated 31-3-2000 which sought to amend CENVAT Credit Rules, 2000 does not prohibit to read the said substitution for the period earlier to that, under challenge. Definition "inputs" under Rule 57A of Central Excise Rules, 1944 read with Rule 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is sine qua non. Therefore Notification No. 13/2003, dated 1-3-2003 guides to appreciate legislative intention. Further, decisions cited by learned Counsel also brings its case in all four. When a levy is not expressly designed by law by a statutory provision, respective Rule which

grants credit cannot be presumed to be a charging section by any analogy”.

8. Similar views have been taken by the Tribunal in the case of ITC Ltd. (supra).
9. In view of the above, the impugned order is set aside and appeal is allowed.

(Dictated and pronounced in the open court.

Sd/
(P.K.Choudhary)
Member (Judicial)
mm

Sd/
(V.Padmanabhan)
Member (Technical)