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

Appeal No. E/157/2012

Arising out of Order-in-Original No. 01/Commr./BOL/12 dated 03.01.2012 passed by the Commissioner of Central Excise, Bolpur.

M/s Sova Ispat Alloys Ltd.

….Appellant (s)

Vs.

Commissioner of Central Excise, Bolpur.

….Respondent (s)

Appearance:
Shri S. P. Majumdar, Advocate for the Appellant (s)
Shri D. Halder, A. C. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 18.09.2018

ORDER No. FO/A/77278/2018

Per Bench:

Briefly stated the facts of the case are that the appellants are engaged in the manufacture of Silico Manganese classifiable under Chapter sub-heading 72023000 of Central Excise Tariff Act, 1985. During the period from April, 2006 to September, 2007 they have received Sillico Manganese in un-processed form and carried out the activity of grinding, sizing and packing. Show Cause Notice dated 04.05.2011 was issued alleging that since these processes of grinding, sizing and packing of Sillico manganese does not amount to manufacture, therefore CENVAT Credit availed on the said input is incorrect and accordingly not admissible to them. The adjudicating authority denied the CENVAT Credit and confirmed the demand of Rs.3,18,42,924/- alongwith interest and imposed penalty of equal amount in terms of Rules 15 (2) of Cenvat Credit Rules, 2004 read with Section 11AC of Central Excise Act, 1944. Hence the present appeal before the Tribunal.

2. The Ld. Advocate appearing on behalf of the appellant had submitted that they have carried out the processes of grinding, sizing and packing to semi-finished Silicon Manganese as at the relevant time they received a huge order and the factory was not capable of carrying out the entire processes. Further, he submitted that on the finished Silico Manganese, they had paid duty which has been duly accepted by the department. Once the duty was duly discharged and accepted by the department, therefore, CENVAT Credit cannot be denied on the input Silico Manganese. In support of his submissions he has relied upon the judgment of Hon'ble Gujarat High Court in the case of Commissioner of Central Excsie & Customs, Surat-III Vs. Creative Enterprise 2009 (235) ELT 785 (Guj.) which was followed by the Mumbai bench of this Tribunal in the case of Brom Chem (India) Pvt. Ltd. Vs. Commissioner of Central Excise, Belapur 2012 TIOL-614-CESTAT-MUM and also the judgment of Hon'ble Delhi High Court in the case of A One Laminators Pvt. Ltd. Vs. Commissioner of Central Excise, 2012 (276) ELT 172 (Del.).

3. The Ld. D. R. reiterated the findings of the Commissioner and submitted that since these processes do not result into manufacture

within the meaning of Section 2(f) of the Central Excise Act, hence CENVAT Credit availed on Sillico Manganese which is their final product cannot be called as an 'Input' and accordingly CENVAT Credit on the same is not admissible.

4. Heard both sides and perused the appeal records.

5. We find that it is not in dispute that the input Sillico Manganese in unfinished stage had been received by the appellant and subjected to the processes of grinding, sizing and packing. After carrying out the said processes, the resultant finished goods were cleared on payment of duty. We find that the issue is no res-integra in view of the jugdgement of the Hon'ble High Court of Gujarat in the case of Commissioner of Central Excise & Customs, Surat-III. Vs. Creative Enterprises (Supra), wherein the Hon'ble High Court as has observed thus:-

> "**6.** When one goes through the order of the first appellate authority, it is apparent that the respondent has been held to be a manufacturer as defined in Section 2(f) of the Central Excise Act, 1944. The appellate authority has taken into consideration the activities carried on by the respondent-assessee. The Tribunal is justified in holding that if the activity of the respondent-assessee does not amount to manufacture there can be no question of levy of duty, and if duty is levied, Modvat credit cannot be denied by holding that there is no manufacture.ò

6. It is an undisputed position that the final product is dutiable and duty is paid by the assessee. When once duty is paid by the assessee treating the activity as manufacturing activity by the Department,

Cenvat credit is available and there is no question of reversion of Cenvat credit.

7. By respectfully following the ratio as laid down by the Hon'ble High Court and the decisions on this issue, the impugned order amount be sustained and the same is set aside. The appeal is allowed.

(Dictated and pronounced in the open court.)

(Bijay Kumar)
Member (Technical)

(P. K. Choudhary)
Member (Technical)

Tushar Kr.