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

Appeal No. E/75120/2018

Arising out of Order-in-Appeal No. 177/HWH/CE/2017-18 dated 29.09.2017 passed by the Commissioner of CGST & Central Excise (Appeals), Kolkata.

M/s. H. R. Steel Industries

….Appellant (s)

Vs.

Commissioner of CGST, Central Excise, Howrah

…Respondent (s)

Appearance:
Shri J. Banerjee, Consultant for the Appellant (s)
Shri D. Haldar, A. C. (AR) for the Respondent(s)

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

Date of Hearing/Decision: - 10.09.2018

Order No…FO/A/77309/2018

Per Shri P. K. Choudhary:

Briefly stated the facts of the case are that the Appellant is engaged in the manufacture of Bolts and Nuts, classifiable under Chapter 73 of the Central Excise Tariff Act. The Appellant had availed CENVAT Credit on inputs viz. MS Joist and Angles amounting to Rs.1,16,791/-. A Show Cause Notice dated 09.07.2012 was issued to the Appellant proposing to deny the said credit on the ground that the said inputs were purchased for the construction/extension of the factory shed and therefore, were not eligible for CENVAT Credit.

2. In its reply, the Appellant had stated that the inputs had been used for the fabrication of the Nut former/Bolt machine and the said machine had been used within the factory for the purpose of manufacture of dutiable goods. The Adjudicating Authority confirmed the demand proposed in the Show Cause Notice along with interest and penalty. On appeal, the Commissioner (Appeals) upheld the Adjudication order. Hence, the present appeal before the Tribunal.

3. The ld. Authorized Representative for the Appellant submitted that the lower authorities have failed to consider the submissions of the Appellant with respect to the fact that the impugned inputs had indeed been used in the fabrication of the aforesaid machine, which was vital for the manufacturing process carried out by the Appellant. Accordingly, the inputs were eligible for CENVAT Credit as per Rule 2(k) of the Cenvat Credit Rules, 2004. He also relied upon the decision of this Tribunal in Swastik Tin Works v. CCE, Kanpur [1986 (25) ELT 798 (Tri.)] to state that proceedings cannot be initiated solely on the basis of audit objections without proper investigation having taken place.

4. The ld. DR reiterated the findings of the lower authorities.

5. Heard both sides and perused the appeal records.

6. I find that the lower authorities have proceeded to deny the CENVAT Credit availed by the Appellant on the ground that the Appellant had failed to produce proper evidence to establish that

the impugned inputs had been used in the fabrication of the aforesaid machine and not for the alleged purpose of construction/extension of factory shed. However, they have failed to prove that the impugned goods were indeed used in the construction/extension of the factory shed. The Adjudicating Authority has proceeded to confirm the demand on the premise that the impugned goods were more likely to have been used in the construction/extension of the factory shed. I find that the burden to prove the alleged activity has not been discharged by the Department and therefore, the demands against the Appellant cannot sustain.

7. In view of the above, the impugned order is set aside and the appeal filed by the Appellant is allowed.

(Dictated and pronounced in the open court.)

(P. K. Choudhary)
Member (Judicial)

Tushar Kr.