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

Excise Appeal No. 77629/2018

(Arising out of Order-in-Appeal No.32/HWH/XAP-98/2017-18 dated-28/02/2018 passed by the Commissioner of CGST & Central Excise Kolkata-North Commissionerate, Kolkata)

M/s. Calcutta Iron Foundry

Applicant (s)/Appellant (s)

Versus

Commr. of CGST & C. Ex., Kolkata North Commissionerate

Respondent (s)

Appearance:

Sri B.N. Chattopadhyay, Consultant for the Applicant (s)

Shri A.K. Biswas, Supdt. (A.R.) for the Respondent (s)

CORAM:

SHRI P.K. CHOUDHARY, HON'BLE JUDICIAL MEMBER

Date of Hearing/Decision :- 04.01.2019

ORDER NO. F.O. /75542/2019

PER SHRI P.K. CHOUDHARY

Briefly stated the facts of the case are that the Appellant is engaged in the manufacture of moulding box, castings and cast articles of iron classifiable under chapters 84 and 73 of the first schedule to CETA, 1985. The Appellant is availing and utilising credit of duty paid on inputs. During the course of audit, the Department observed that the Appellant had availed credit on casting and cast articles of iron, which are not inputs as per the raw material register being maintained by the Appellant. It was further found that the Appellant had taken credit on Black Pipes, which is neither an input nor a final product for the Appellant. In this regard, the Appellant submitted that the cast articles of iron were being purchased and after certain processing on the rough cast articles, the same were being sold on payment of duty. Similarly, the black pipes were being cut to pieces as per the requirement of the buyers and the same were cleared on payment of duty.

2. A Show Cause Notice dated 17.03.2010 was issued proposing recovery of irregularly utilised Cenvat credit amounting to Rs.3,12,071/- along with interest and penalty. The Adjudicating Authority confirmed the demand proposed in the Notice along with interest and imposed penalty of Rs. 3,12,071/- under Section 11AC of the Central Excise Act read with Rule 15(2) of the Cenvat Credit Rules, 2004. The Commissioner (Appeals) upheld the Adjudication order. Hence, the present appeal.

3. The Ld. Consultant appearing on behalf of the Appellant submitted that rough cast articles of iron were procured from the market and the Appellant undertook processes such as machining, grinding, painting, etc. and thereafter, cleared the same on payment of duty. It was submitted that the said processes carried out amounted to manufacture and therefore, the credit had been rightly availed. The Appellant relied upon the decision of the Hon'ble Bombay High Court in the case of Ajinkya Enterprises reported in 2013 (294) ELT 203 (Bom.). It was also submitted that even if the processes carried out by the Appellant did not amount to manufacture, credit could not be denied if goods had been procured and cleared on payment of duty. It was submitted that the Commissioner (Appeals) had not considered the submissions made by the Appellant.

4. The Ld. DR justified the findings of the lower authorities.

5. Heard both sides and perused the appeal records.

6. I find that the Commissioner (Appeals) has observed that the Appellant was not eligible for the benefit of Cenvat credit as they had not entered the receipt of the cast articles of iron in their input register and had

not entered the details of manufacture and clearance of Black Pipes in the Daily Stock Account.

7. I find that it is not in dispute that the impugned goods had been procured by the Appellant on payment of duty and were cleared on payment of duty after carrying out certain processes. The intention of the Legislature in introducing the concept of Cenvat credit is to eradicate the cascading effect of tax. In the instant case, the Appellant has paid duty on the final products as well as purchased duty paid inputs for manufacturing final products. Therefore, I am of the considered view that credit has rightly been availed by the Appellant on such duty paid inputs. With respect to the observation of the Commissioner (Appeals) regarding non-recording of details in the input register, I find that it is a procedural lapse on the part of the Appellant. The Appellant submits that all necessary details had been furnished before the lower authorities. Even otherwise, substantive benefit cannot be denied due to procedural infirmities.

8. In view of the above, the appeal filed by the Appellant is allowed.

(Operative part of the order already pronounced in the Court)

Sd/-

P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-