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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 79197/2018

(Arising out of Order-in-Appeal No.22/DGP-IV/CT (Audit-II)/2017-18 dated-13/02/2018 passed by Commissioner of Central Excise (Appeal) Audit-II, Durgapur)

M/s. Amit Metaliks Ltd.
238 B, A.J.C. Bose Road, 3rd Floor,
Kolkata-700 020

Applicant(s)/Appellant(s) Versus

Commr. of Central Excise and
Service Tax-Durgapur,
C.R. Building, 5, Main Road,
Ranchi-834001

Respondent (s)

Appearance:

Sri Ajay Agarwala, A.R. for the Appellant (s)
Sri A.K. Biswas, Supdt. (A.R.) for the Respondent (s)

CORAM:

HON'BLE MR. P.K. CHOUDHARY, MEMBER (JUDICIAL)

Date of Hearing/Decision:08.02.2019

FINAL ORDER NO: FO/75641/2019

PER SHRI P.K. CHOUDHARY

The appellant is engaged in the manufacture of M.S. Billets and TMT Bars classifiable under Chapter 72 of the first schedule to the Central Excise Tariff Act, 1985 at its factory located in Durgapur. Show Cause Notice dated-16/08/2012 was issued alleging irregular availment of Cenvat credit of Rs.75,451/- during the period 2010-2011 on 'Chain' classifiable under

CETSH No. 7315 1900. It was further alleged that the assessee has taken Cenvat Credit on the basis of photocopy of the invoice and hence they have contravened Rule 3 and Rule 9 of the Central Excise Rules, 2004. The Adjudicating Authority ordered for recovery of Cenvat Credit amounting to Rs.75,451/- alongwith applicable interest and also imposed penalty of equal amount in terms of Rule 15 (2) of the Rules read with Section 11AC of Central Excise Act, 1944. On appeal, the Ld. Commissioner (Appeals) upheld the Order-in-Original and rejected the appeal. Hence, the present appeal before the Tribunal.

2. The Ld. Counsel appearing on behalf of the appellant submits that the impugned goods were received under the authorised documents of payment of the appropriate Central Excise duty and duly recorded in the prescribed books of Cenvat Credit Accounts and the detailed particulars thereof were submitted to the Jurisdictional Range office through monthly Reports and Returns under strict adherence to the provisions of Central Excise Act and Rules. He further submits that the definition of inputs under rule 2 of CCR Rules, 2004 includes all goods except a few like High Speed Diesel , Motor Spirit, Light Diesel Oil etc. and nothing else and whereas the definition of capital goods is not restricted within the Tariff classification only, rather on the indispensability of the items as parts/components/accessories etc. Regarding the allegation of availing Cenvat Credit of duty on photocopy of invoice, it is his submission that due to some unavoidable circumstances, the original invoice was not traceable but the proof of payments were always available and produced before the authorities below. The Ld. Consultant relied upon various decision of the Tribunal and the High Courts in support of his submissions.

3. Ld. D.R. justified the impugned orders.

4. Heard both sides and perused the appeal records.

5. I find that the provision of Section 2 (f) of Central Excise Act, 1944 defines that ‘manufacture’ involves process incidental or ancillary to the completion of manufactured products. Manufacture involves series of process. Process in manufacture or in relation to manufacture implies not

only the production, but also the various stages through which the raw materials are subjected to change by different operations. Each step towards production would be a process in relation to manufacture and any activity or operation which is an essential requirement and is so related to the further operation for the end result would also be a process in or in relation to manufacture". I further, observe that for the purpose of the manufacturing activity by the appellant/assessee, a number of plant and machineries/capital goods including Conveyor Belt was installed. The Conveyor Belt is a classified capital goods classifiable under Chapter 84 which consists of several components, parts and accessories including 'chain'. The installation of conveyor belt is a technological compulsion in the factories, as no manual operation is possible. The utilisation of the 'chain' with the machinery i.e. conveyor belt are obviously the integral part of the technology irrespective of their tariff classification and the collective performance of all the plant and machinery/capital goods. I find that the subject items used in the manufacture of capital goods which are further used for the manufacture of final products as per the provisions of Rule 2 (k) of CCR, 2004.

6. I further, observe that the bills and invoices were duly accounted for and were part of the statutory registers maintained by the appellant and the information was also communicated with the statutory returns. It has been held by various decisions of the Tribunal and the Hon'ble High Courts that Cenvat Credit can be allowed on the photocopy of the documents if supported by statutory registers and proper accounting has been observed.

7. In view of the above discussions, the impugned orders are set aside and the appeal filed by the appellant is allowed with consequential benefit.

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

Sd/-

P.K. CHOUDHARY
(JUDICIAL MEMBER)

k.b/-