IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, KOLKATA

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 77136 of 2018

Arising out of Order-in-Appeal No.53/CE/RKL-GST/2018 dated 22.03.2018 passed by the Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. Mahanadi Coalfield Ltd.
Jagannath Area, PO Dera (Talcher),
Distt. Angul, Pin-759103

Appellant (s)

VERSUS

Commr. of CGST & CX, Bbsr
Central Revenue Building,
Rajaswa Vihar, Bhubaneswar-7,
Odisha

Respondent (s)

APPERANCE :

Shri Rajeev Agarwal, CA for the Appellant
Shri S. Mukhopadhyay, Suptd. (A. R.) for the Respondent

CORAM:

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

Date of Hearing : 11.06.2019
Date of Pronouncement:-03/07/2019
Order No.FO/75770/2019

PER P. K. CHOUDHARY :

The present appeal has been filed by the appellant assessee, M/s. Mahanadi Coalfields Limited, against demand of Central Excise duty arising due to disallowance of CENVAT credit on inputs of Rs.1,50,799/- along with interest and equal amount of penalty for the period 2011-12 to 2015-16.

2. Briefly stated, the facts of the case are that the appellant is discharging Central excise duty on 'Coal', w.e.f. 01.03.2011 and availing the benefits of CENVAT credit. They availed credit of duty paid on MS plates which has been used in repair or maintenance of Heavy Earth Moving Machinery (HEMMs) used in the coal mines. Show Cause Notice dated 9th May, 2016 was issued to disallow the credit which culminated into Order-in-Original dated 30.12.2016 wherein it was held that the MS Plates used in mines for repairs cannot be said to be 'input' inasmuch as

there is no relationship with the manufacture of the final product. Credit was accordingly denied and demand was confirmed with equal penalty and interest. In appeal, the adjudication order has been upheld and the appeal was rejected. Hence, the present appeal before the Tribunal.

3. Sri Rajeev Kr. Agarwal, CA, appearing for the appellant submitted that the subject goods M S plates has been used for repair or maintenance of Heavy Earth Moving Machinery (HEMMs) used in the coal mines of the appellant which is not in dispute. He further submitted that the fact of usage of HEMMs in the mines for production of coal is also not in dispute. The Ld. Commissioner (Appeals) in the impugned OIA, Para 5.1, has observed that since the aforesaid goods have been used for repairs in the mines, the same cannot be said to have any relationship with the manufacture of the final product (coal) and hence not eligible for credit. It is the submission of the appellant that the said observation has been made by the Ld. Commissioner without any basis, even though he has specifically noted in the impugned OIA that the said goods are used for repair and maintenance of coal handling plant and HEMMs. Therefore, the observation made by Ld. Commissioner is factually as well as legally not correct.

He referred to the decision Bench of the Tribunal in Final Order No. 52767/2018 dated 07.06.2018, as modified vide Misc. Order No.50910/2018 dated 27.12.2018, in the case of appellant's sister concern, i.e. South Eastern Coalfields Limited, which is co-subsidiary of Coal India Limited, in Appeal no. 50565/2018 wherein the eligibility of CENVAT credit on HD Steel, Steel Cogs/TIS Cogs, TMT Rod, MS Plate, MS Pipes, MS nut, Telescopic Steel props etc has been upheld. He stated that since the goods involved in the instant case i.e. MS Plate, is similar to the referred case of sister unit, wherein CENVAT credit has been allowed and, thus, there is no reason to deviate from the said decision. He further referred to the decision in another case of SECL vide Final Order no. 50014/2016 dated 05.01.2016 by Delhi Bench, wherein it was held that assessee is eligible for credit on various steel items (TIS Gog, Moulded Sleepers, etc) used in underground mines without which mining is not possible. It has been clearly held that such goods are not excluded from the definition of ‘input’ as per CENVAT Credit Rules, 2004.

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He further submitted that in another case of SECL, Jamuna Kotma Area, the Ld. Commissioner (Appeals), Raipur has allowed the appeal of assessee vide Order-in-Appeal dated 15.02.2018 holding that the steel items i.e. MS Plate, TMT Rod, G.I.Pipe, Channel, HR/MS Plate, HR Sheet etc used in mines are eligible for credit. He also submitted that Appeal bearing no. E-52485/2018 was filed by the Department against the aforesaid Order-in-Appeal and the same has been rejected by the Tribunal on 29.05.2019. The case therefore stands decided in favour of the assessee. Apart from the above, he also referred to the CBEC Circular no. 943/04/2011-CX dated 29.04.2011 in support of his contentions. He further relied on the following case decisions:

- CCE, Vishakhapatnam v. Hindustan Petroleum Corporation Ltd. 2016 (338) ELT 308 (Tri-Hyd), affirmed by the Hon’ble Andhra Pradesh High Court in Commissioner v. Hindustan Petroleum Corporation Ltd. 2017 (356) ELT A137 (AP).
- CCE Trichy vs. CESTAT, Chennai 2014 (309) ELT 71 (Mad)
- National CO-Operative Sugar Mills Ltd vs. Commr. of C. Ex., Madurai [2016 (344) E.L.T. 832 (Mad.)].
- Ambuja Cements Eastern Limited vs. CCEx, Raipur [2010(256) ELT 690 (Chhattisgarh)].
- CCEx, Bangalore – I vs. Alfred Herbert (India) Ltd. [2010(257) ELT 29 (Kar.)]
- Hindustan Zinc Ltd. vs. Union of India [2008 (228) ELT 517 (Raj.)]

In addition to the case on merits, he stated that the demand is also barred by limitation in absence of fraud or suppression with intent to evade payment of duty.

4. The Ld. D R submitted that the case laws relied upon by the appellants are distinguishable and not applicable to the present case. He supported the findings of the lower authorities and submitted that the MS plates used in repair could not be said to be inputs as per definition of Rule 2(k) of the CCR, 2004. He stated that the appellant is not entitled for credit and accordingly prayed that the appeal be rejected.

5. Heard both sides and perused the appeal records.

6. In the instant case, the short issue that arises for consideration is whether the appellant is eligible to avail CENVAT credit of central excise duty paid on MS Plate used in repair and maintenance of capital goods. I find that there is no dispute that the subject goods ‘MS plates’ has been used for repair or maintenance of HEMMs used in the coal mines of the appellant. I find that the definition of term ‘input’ as defined in the

CCR, 2004, includes all goods used in the factory of production unless specifically excluded therefrom. Neither of the exclusion clauses provided in the definition of term 'input' under Rule 2(k) is attracted in the instant case as stated below:

Clause (A) – covers diesel and petrol, which is not relevant in the instant case.

Clause (B) – covers goods used for construction of building or a civil structure or laying of foundation or structure for support of capital goods – In the instant case, the subject inputs have not been used for construction of any building or structure/foundation for support of capital goods, but for repair and maintenance of coal handling plant and HEMM's. The usage of subject goods is very integral to the mining activity itself without which mining cannot be done. Hence, this exclusion clause is also not attracted.

Clause (C) – Capital goods – The subject goods are not capital goods *per se* and hence this clause is also not attracted

Clause (D) – Motor vehicles – Not applicable

Clause (E) – Food items, goods used in guest house, etc – Not applicable

Clause (F) – Goods not having any relationship – In my view, the use of goods in question in the repair and maintenance of coal handling plant and HEMM's is indispensible, in absence of which mining activity cannot be undertaken. Therefore, usage of subject goods bears a direct nexus with the mining activity and by no stretch of imagination it can be said that they have no relation with production of coal, which is the final product. The said exclusion clause is also not attracted. I also find that after the amendment made in the definition of 'input' w.e.f. 01.04.2011, the CBEC in Circular no. 943/04/2011-CX dated 29.04.2011 in serial no. (3) has clarified as below:-

> *"Credit of all goods used in the factory is allowed except in so far as it is specifically denied. The expression "no relationship whatsoever with the manufacture of a final product" must be interpreted and applied strictly and not loosely. The expression does not include any goods used in or in relation to the manufacture of final products whether directly or indirectly and whether contained in the final product or not. Only credit of goods used in the factory but having absolutely no relationship with the manufacture of final product is not allowed. Goods such as*

> *furniture and stationary used in an office within the factory are goods used in the factory and are used in relation to the manufacturing business and hence the credit of same is allowed."*

7. Thus, in view of the CBEC clarification as above, I do not find any reason to hold that the goods in question have no relationship with the coal production process. Moreover, I also find that the Hon'ble Andhra Pradesh High Court has affirmed the decision of this Tribunal in case of Hindustan Petroleum Corporation Ltd. (Supra) wherein the availment of credit on HR Sheets and Plates used for repair and maintenance of storage tanks, considering them to be an integral part of manufacturing, have been upheld. Similar view have been taken by the Hon'ble Madras High Court in the case of CCE Trichy vs. CESTAT, Chennai 2014 (309) ELT 71 (Mad) and in the case of Tamil Nadu Newsprints & Paper Ltd vs. Commr. of C. Ex., Tiruchirapalli [2017 (357) E.L.T. 60 (Mad.)].

8. By Respectfully following the aforesaid judgments of the Hon'ble High Courts and the decision of this Tribunal in the sister company's case, I am inclined to hold that the appellant is legally entitled to avail the benefit of credit on goods used in the repair and maintenance of plant & machinery which is used in the coal production process. The demand of duty, interest and penalty is therefore set aside and the appeal filed by the appellant is allowed with consequential benefits.

(Pronounced in the court on 03/07/2019.)

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

Pooja