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

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 75681 of 2018

Arising out of Order-in-Appeal No.310/HWH/CE/2017-18 Dated 27/11/2017 passed by Commissioner of CGST & CX (Appeals-II), Kolkata.

M/s. Mangal Steel Enterprises
15/1 "F" Road, Belgachia, Howrah
PIN-711106 **Appellant (s)**

VERSUS

Commr. of CGST & CX, Howrah
M. S. Building, Customs House, 15/1 Strand Road,
Kolkata-700001

Respondent (s)

APPERANCE :

Shri S. P. Siddhanta, Consultant for the Appellant
Shri A. Roy, Suptd. (A. R.) for the Respondent

CORAM:
HON'BLE MR. P.K.CHOUDHARY, MEMBER (JUDICIAL)
ORDER NO.FO/76865/2019

Date of Hearing : 02.07.2019
Date of Decision : 02.07.2019

PER P. K. CHOUDHARY :

The facts of the case in brief are that the appellant is engaged in the manufacturing of 'Full threaded Rods, long Barbed Arms, Construction Stakes, Tension Bar, Non-alloy Steel Rods, MS Scrap, Zinc dross/ash etc.' classifiable under Chapter 73, 72 & 26 of the First Schedule to the Central Excise Tariff Act, 1985.

A Show Cause Notice dated 14/05/2015 was issued alleging availment of irregular Cenvat Credit. The Adjudicating Authority confirmed the entire demand of Rs.3,58,761/- after disallowing Cenvat Credit along with interest and also imposed penalty of equal amount in terms of Section 11AC(1) of the Central Excise Act,1944 read with Rule 15(2) of the CCR, 2004.

On appeal, the Lower Appellate Authority set aside the demand of Rs.2,14,206/- and upheld the remaining demand of Rs.1,44,555/-. Being aggrieved, the asseesee is in appeal before the Tribunal.

2. Heard both sides and perused the appeal records.

3. I find that the Lower Appellate Authority did not accept the submission of the appellant in absence of any cogent documentary evidence. It is the case of the appellants that Plates and Disc Springs are used as parts and accessories of capital goods already installed in the factory. It is their submission that such parts and accessories being classifiable under any chapter of Central Excise Tariff are eligible for Cenvat Credit as per Rule 2 (a) of Cenvat Credit Rules, 2004.

4. I find that CBEC as per circular No.276/110/96-TRU dated 02/12/1996 had clarified that all parts, components, accessories, which are to be used with capital goods of clauses (a) to (c) of explanation of Rule 57Q and classifiable under any chapter heading are eligible for availment of Modvat Credit. This clarification of CBEC is still valid for Cenvat Credit also. I also find from the records that the appellant have utilized the Plates (SH No. 720851100) and Disc Spring (SH No. 73201019) as parts and accessories of various capital goods (zinc bath, power press machine/shearing machines etc) installed in the factory during the course of routine maintenance of factory installations. It is not practical on the part of the appellants or for the matter any assessee for obtaining Chartered Engineer’s certificate or any other similar documents for such routine maintenance work of factory machineries. The department has failed to establish that the appellants have not utilized the said parts namely plates and Disc spring for maintenance of capital goods. The appellant has filed a certificate from the Chartered Accountant showing the receipt of inputs for the factory premises. When the receipt and duty paid on input is not in dispute, the Cenvat Credit cannot be denied to the appellants.

5. In view of the above discussions, the impugned order upholding the demand of Rs. 1,48,555/- along with interest and proportionate penalty is set aside. The appeal filed by the appellant is thus allowed in the above terms with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/-

(P. K. Choudhary)
Member (Judicial)

Pooja