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

REGIONAL BENCH – COURT NO.1

Ex. Appeal No. 77009 of 2018

Arising out of Order-in-Appeal No.66/ASN-I/CT(Audit-II)/2017-18 dated 06/03/2018 passed by Commissioner of Central Tax (Appeal), Audit-II.

M/s. Super Smelters Ltd.
Jamuria Industrial
Estate ikra Jamuria,
Jamuria, West Bengal-713362 **Appellant (s)**

VERSUS

CGST & Excise, Bolpur
Nanoor, Chandidas Road,
Bolpur, West Bengal-731204

Respondent (s)

APPERANCE :

None for the Appellant
Shri S. S. Chattopadhyay, A. R. for the Respondent

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

ORDER NO.FO/77039/2019

Date of Hearing : 18 July 2019
Date of Decision : 18 July 2019

PER P. K. CHOUDHARY :

When the matter was called, none appeared on behalf of the appellant since the dispute in the present appeal lies in narrow compass, the appeal is taken up for hearing in the absence of the appellant and with the consent of the Ld. Departmental Representative.

Show Cause Notice dt. 03/03/2011 was issued alleging irregular availment of Cenvat Credit amounting to Rs.2,35,237/- on welding electrodes as input which were used in repair and maintenance in the factory during the financial year 2009-10. The Adjudicating Authority disallowed the Cenvat Credit and confirmed the demand along with interest and imposed penalty of equal amount.

On appeal, the Lower Appellate Authority upheld the Adjudication Order and rejected the appeal. Hence, the present appeal before the Tribunal.

2. Heard the Ld. DR and perused the appeal records.

3. The only dispute in the present appeal is whether welding electrodes used for Repair & Maintenance of Plant & Machineries would be eligible for credit as input under the Cenvat Credit Rules.

4. I find that the issue is no more res-intigra in view of the judgment of Hon'ble High Court of Bombay (Nagpur Bench) in the case of Manikgarh Cement Vs. Commr. of Cus. & C. Ex., Nagpur as reported in 2018 (360) E. L. T. 86 (Bom.). The relevant paragraphs of the aforesaid judgment of the Hon'ble High Court are reproduced below:-

> ***5.*** *At the very outset, Mr. Bhattad, Learned Counsel for respondent-Revenue states that the entire issue stand concluded in its favour in view of the decision of this Court in Lloyd Metals & Engineers Ltd. v. Union of India, 2010 (252) E.L.T. 355 (Bom.). Counsel for both sides are agreed that the definition of 'input' as given in the Cenvat Credit Rules, 2001 is identical to that found in Cenvat Credit Rules, 2004.*
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> ***6.*** *Mr. Bhattad states that Lloyd Metals & Engineers have carried the order of this Court in appeal to the Supreme Court and the same is awaiting final hearing.*
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> ***7.*** *Mr. Thakur, Learned Counsel for the appellant-assessee submits that the aforesaid decision should not be made applicable to the case of present assessee. According to him the aforesaid decision was rendered in favour of the Revenue as assessee therein has not laid necessary factual foundation to show that welding electrodes are eligible for credit as input under the Cenvat Credit Rules. Further, in the present facts it is submitted that welding electrodes used for repairs and maintenance of plant and machinery would be entitled to the credit as repairs are critical to the manufacturing plant. In the above view, he submits that the appeal of the appellant be considered on its own merits.*
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> ***8.*** *We find that the decision of this Court in Lloyd Metals & Engineers Ltd. (supra) was on the very issue which arises herein viz. the eligibility of the welding electrodes used for repairs and maintenance of plant and machinery to be considered as inputs used in or in relation to manufacture of final goods so as to be covered by definition of inputs under the Cenvat Credit Rules. This Court in Lloyd Metals & Engineers Ltd. (supra) on principle held that material used for repairs and maintenance of capital goods cannot be considered to be an input under Cenvat Credit Rules, 2004. The view taken by this Court as far back as 2009 has been binding upon all authorities within the State for the last 8 years. We cannot depart from the view taken therein and the distinctions shown by Mr. Thakur does not warrant our ignoring the binding precedent and/or refering it to the Hon'ble the Chief Justice to constitute Larger Bench.*
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> ***9.*** *Therefore, the question of law for our decision stand concluded against the assessee by virtue of decision in Lloyd Metals & Engineers Ltd. (supra).*

> ***10.*** *In the above view, the substantial question of law is answered in affirmative i.e. in favour of respondent-Revenue and against appellant-assessee.*
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> ***11.*** *We are informed that the decision of this Court in Lloyd Metals & Engineers (supra) is a subject matter for consideration before the Apex Court Bearing C.A. No. 6124/2001. However, the order in Lloyd Metals & Engineers Ltd. (supra) has not been stayed.*

5. By respectfully following the aforesaid judgment of the Hon'ble High Court cited supra, the impugned order is set aside. The appeal filed by the appellant is allowed with consequential benefits, if any.

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

Sd/-

(P. K. Choudhary)

Member (Judicial)

Pooja