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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.619 of 2010

(Arising out of Order-in-Original No.03-04/Commr./CE/Kol-II/Adjn/2010-11 dated 30.04.2010 passed by Commissioner of Central Excise, Kolkata-II.)

M/s. Steel Products Limited (Unit-I)
(C.T.I. Road, Biradinghi, Howrah-711108.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-II

.....Respondent

(Customs House, (MS Building), 15/1, Strand Road,
Kolkata-700001.)

WITH

Excise Appeal No.618 of 2010

(Arising out of Order-in-Original No.03-04/Commr./CE/Kol-II/Adjn/2010-11 dated 30.04.2010 passed by Commissioner of Central Excise, Kolkata-II.)

Shri Hemanta Kumar Khaitan,
Managing Director,
M/s. Steel Products Limited (Unit-I)
(96, Garden Reach Road, Kolkata-700023.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-II

.....Respondent

(Customs House, (MS Building), 15/1, Strand Road,
Kolkata-700001.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P. K.CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI P.V.SUBBA RAO, MEMBER(TECHNICAL)

FINAL ORDER NO. 75254-75255/2020

DATE OF HEARING : 28 January 2020
DATE OF DECISION : 28 January 2020

P.K.CHOUDHARY :

Briefly stated the facts of the case are that the appellant company received various inputs from their other unit described as Unit No.II against Annexure 2 Challans as per the provisions of Rule 4(5)(a) of the Cenvat Credit Rules, 2004. After processing these inputs, they cleared the same against the said Annexure-2 challans to Unit No.II, wherefrom ultimately the finished goods were cleared on payment of Central Excise duty. The duty was demanded from Unit No.1 alleging that the Unit No.I and Unit No.II being under the same management, Unit No.I cannot be treated as a job-worker of Unit No.II. The adjudicating authority confirmed the demand and imposed equivalent penalty against the appellant company and also imposed personal penalty on the Managing Director of the appellant company.

2. Learned Advocate for the appellants has submitted that it is the case of the Revenue that instead of Unit No.II, paying the Central Excise duty on their finished goods, the Unit No.I ought to have discharged duty on the said goods. Learned Advocate submitted that since the goods had suffered duty, asking duty again on the same goods from Unit No.I would tantamount to charging duty twice on the same goods. Further, he has submitted that the appellants had followed the procedure laid down under Rule 4(5)(a) of the Cenvat Credit Rules in respect of the inputs received in their factory at Unit No.II, which were ultimately sent to Unit No.I for further processing. The resultant products were duly received in their Unit No.II and ultimately, cleared to their customers on payment of appropriate excise duty. Further, he has submitted that the case law relied upon by the adjudicating authority namely J.K.Udyog Ltd., has been overruled by the Apex Court in Vikram Cement vs. CCE, Indore reported in 2006 (194) ELT 3 (SC). He has further referred to the decision of this Tribunal in the case of M/s.Upadyay Valves Ltd. vs. CCE, Kolkata-II [2010 (257) E.L.T. 449

(Tri.-Kolkata)], wherein in a similar situation, this Tribunal had allowed the appeal filed by the appellant therein.

3. Learned Authorized Representative for the Revenue has justified the findings of the learned Commissioner in the adjudication order.

4. Heard both sides and perused the appeal records.

5. We find that the appellant company had received certain inputs from their Unit No.II for further processing and after the inputs were processed, the same were removed from Unit No.I to Unit No.II. The movement of inputs of the processed goods were carried out under Annexure-II Challans by following the procedure laid down under Rule 4(5)(a) of the Cenvat Credit Rules, 2002, which reads as under:-

> **RULE 4. Conditions for allowing CENVAT credit.**
>
> (5)(a) The CENVAT credit shall be allowed even if any inputs or capital goods as such or after being partially processed are sent to a job worker for further processing, testing, repair, re-conditioning [or for the manufacture of intermediate goods necessary for the manufacture of final products] or any other purpose, and it is established from the records, challans or memos or any other document produced by the manufacturer or provider of output service taking the CENVAT credit that the goods are received back in the factory within one hundred and eighty days of their being sent to a job worker and if the inputs or the capital goods are not received back within one hundred eighty days, the manufacturer or proficer of output service shall pay an amount equivalent to the CENVAT credit attributable to the inputs or capital goods by debiting the CENVAT credit or otherwise, but the manufacturer or provider of output service can take the CENVAT credit again when the inputs or capital goods are received back in his factory or in the premises of the provider of output service.

Undisputedly, the excise duty involved on the finished goods viz. transmission towers etc. had been discharged at their Unit No.II at the time of its clearance from the said unit to their respective customers.

6. We find that the judgement of the Hon'ble Supreme Court in the case of J.K.Udyog relied upon by the adjudicating authority is not relevant, inasmuch as the Hon'ble Apex Court in the said case was confronted with the issue whether explosives used in mines at a distance away from the factory was to be considered as inputs. Nevertheless, the said judgement of the Hon'ble Supreme Court had been later overruled in the Vikram Cement case (supra). Besides, we find that on almost similar facts, this Tribunal in Upadhyay Valves's

case (supra) has rejected the contention of the Revenue that Rule 4(5)(a) of Cenvat Credit Rules, 2004 cannot not made applicable to the own unit of a manufacturer, as the unit belonging to the same manufacturer cannot be treated as a job worker. Relevant Paras of the said judgement are as follows:-

> *"7. We have considered the submissions made from both the sides and perused the records. We find that the CENVAT Credit Rules permit "manufacturer" to take credit of duty paid in injputs/capital goods. The four units are different units of the same company and, therefore, they are same manufacturer as a legal entity. However, for the purpose of excise law each of the unit is required to register separately and discharge their duty liability when the goods are removed from the respective units. In fact capitive consumption of goods manufactured in any unit used in the very same unit is also liable to duty unless specifically exempted. In other words, each of the unit is treated, for all practical purposes, as if an independent company for the purpose of levy, exemption, extending of CENVAT Credit etc. in accordance with law. The present dispute, requires to be issued in the above context.*
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> *8. On perusal of the order of the Commissioner, it is not in dispute that unit I, III and IV of the Appellant company have received duty paid inputs and taken credit. They have undisputedly removed the same inputs after taking permission of the jurisdictional central excise authorities for the purpose of processing as envisaged under Rule 57AC(5)(a) of the Central Excise Rules, 1944 and later under Rule 4(5)(a) of the Cenvat Credit Rules, 2004. The reasoning of the Commissioner is that unit II not being a different legal entity from the units I, III and IV cannot be treated as a job-worker and therefore conditions of Notification No.214/86 have been violated. If the benefit is available for removal of inputs to a third party (different legal entity), there is no legal sanctity for denying the concession to another unit of the same legal entity. The payment of job charges cannot be the criteria for levy or exemption from excise duty. In cases of captive consumption, obviously, no payment is involved and still levy is attracted. On the same analogy the benefit available to a job worker (a different legal entity) cannot be denied when another unit of the*

manufacturer undertakes similar functions. Therefore we are not in agreement with the reasoning adopted by the Commissioner holding that the unit II of the Appellant company has not fulfilled the conditions of Notification No.214/86."

7. In view of the above discussions, the impugned order cannot be sustained and is accordingly set aside. Penalty imposed on the Managing Director is also set aside. Both the Appeals are allowed with consequential benefits, if any.

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

SD/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

SD/

(P.V.SUBBA RAO)
MEMBER (TECHNICAL)

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