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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.76143 of 2018

(Arising out of Order-in-Appeal No.143/Pat/C.Ex./Appeal/2017-18 dated 02.01.2018 passed by Commissioner (Appeal II) of CGST & Excise, Patna)

M/s Carbon Resources Pvt. Ltd.
Unit II, Tilrath, Industrial Area, Barauni, Dist.-Begusarai, Bihar-851122

Appellant

VERSUS

Commissioner of CGST & Excise, Patna
C.R.Building (Annexe), Bir Chand Patel Path, Patna

Respondent

APPERANCE :

Shri Ankit Kanodia, Advocate for the appellant
Shri S.S.Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75217/2022

DATE OF HEARING : 25.03.2022
DATE OF PRONOUNCEMENT : **19 APRIL 2022**

PER P.K.CHOUDHARY :

The present appeal has been filed by the Appellant being aggrieved with the Order-in-Appeal dated 02.01.2018 passed by the learned Commissioner (Appeals), whereby the demand of excise duty of Rs.9,07,166/- has been confirmed for the period Financial Year-2011-12, along with interest and penalty imposed as proposed in the Show Cause Notice dated 07.01.2016.

2. Briefly stated, the facts of the case are that the Appellant is engaged in the manufacture of Calcined Petroleum Coke (CPC) classifiable under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 (in short 'Tariff'). The Appellant is the

manufacturer and supplier of CPC to various industries. Accordingly, it had sold certain quantities of CPC to M/s Bhilai Steel plant, SAIL and M/s Monet Ispat & Energy Ltd on payment of Central Excise duty at the applicable rate from its Unit II, i.e. factory situated at Barauni, Begusarai during the period from Oct 2010 to Nov 2010 and in Feb 2010 respectively.

3. The Appellant further states that due to defective/beyond permissible tolerance supplies certain quantity of materials was rejected and returned by the purchasers. Such rejected quantities were received in the Unit II of the Appellant i.e. Barauni, Begusarai and the same was used for re-making as per the provision of Rule 16(1) of the Central Excise Rules, 2002. The Appellant states that out of the total rejection m Memos issued, 15 nos. of rejection memos were wrongly addressed in favour of Unit I and received by the Head Office. However, the Appellant correctly recorded the rejection in the books of Unit II by passing Journal entry in the books of the unit which had sold the goods. Further, the Appellant sought to avail Cenvat Credit amounting to Rs. 9,07,166/- of these rejected products as inputs and filed necessary intimation letter dated 03.05.2011 to the Superintendent, Begusarai along with Annexure reflecting receipt of goods in the factory. Such goods were physically inspected by the Range Superintendent and intimation letter was received with remarks on the body "Pl Observe all C. Ex. Formalities and produce documentary evidences that goods were received." The same was duly complied with.

4. Under the above background a Show Cause Notice dated 07/01/2016 was issued by the department alleging incorrect availment of Cenvat credit on the context that the returned goods were not received by the Barauni unit of the Appellant. The said Show Cause Notice culminated into demand order dated 31.03.2017 and further the first appellate authority also upheld the same vide order dated 02.01.2018. Hence the present appeal.

5.1 Shri Ankit Kanodia, learned Advocate, appeared on behalf of the Appellant. He contended that the demand of Cenvat credit is not sustainable as the goods have been correctly accounted for in the Barauni unit and that the Range Suptd. Barauni had also verified such goods on the basis of the letter dated 03.05.2011 issued by the Appellant for availment of Cenvat credit under Rule 16 of the Central Excise Rules, 2002.

5.2 He further produced a Chartered Accountant's Certificate dated 22.03.2022 for the same wherein the details of the goods sold and returned has been tabulated and certified.

5.3 Further the Appellant has also referred to the following judgments wherein it has been held that substantive benefit ought not be denied on account of procedural lapses :

(1) Formica India Division and Ors. Vs. Collector of Central Excise and Ors. [MANU/SC/1256/1995]

(2) Securipax India Private Ltd. Vs. Collector of Central Excise, Noida wherein The High Court of Allahabad [MANU/UP/1766/2013]

(3) UM Cables Limited Vs. Union of India and Ors. [MANU/MH/0466/2013]

(4) Shivam Electrical Industries Vs. Union of India [2018 (359) E.L.T. 46 (J & K)]

6. The learned Authorized Representative appearing on behalf of the respondent department, justified the orders of the lower authorities.

7. Heard both sides and perused the appeal records.

8. In the instant case, it is seen that the Adjudicating Authority has confirmed the demand of Cenvat credit only on the ground that the document issued by the customers for return of excise paid goods was addressed to the Giridih unit of the Appellant and thus it is not possible for the Appellant to avail Cenvat credit of duty paid goods under Rule 16(1) of the Central Excise Rules, 2002 in the Barauni unit from which goods were actually sold. Both the lower authorities have ignored the submissions of the Appellant with respect to verification of the returned goods by the Ld. Superintendent, Begusarai regarding identification of goods being returned at Barauni unit of the Appellant.

9. I find that since the Appellant has been able to substantiate that the said goods were indeed received at the selling unit only i.e. Barauni by way of intimation letter dated 03/05/2011 being Exhibit M of the appeal paper book, duly supported by Chartered Accountant's Certificate in this regard, the orders of the lower authorities deserve to be set aside as there is no contrary evidence brought on record.

10. Thus, the appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Pronounced in the open court on **19.04.2022**)

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

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