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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76719 of 2018

(Arising out of Order-in-Appeal No.19/CE/BBSR-GST/2018 dated 14.02.2018 passed by Commissioner(Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. Maithan Ispat Limited
(Kalinga Nagar Industrial Complex, P.O.:JOkhapura, Dist: Jajpur-755026, Odisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar Commissionerate

.....Respondent

(C.R.Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

APPEARANCE

Shri K.K.Acharya, Advocate for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Respondent (s)

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

FINAL ORDER NO. 75543/2022

DATE OF HEARING : 4 July 2022
DATE OF DECISION : 13 October 2022

P.K.CHOUDHARY :

The Appellant is engaged in the manufacture of Sponge Iron and MS Billet. The facts of the case in brief are that during the course of audit by the Auditor General(Odisha), Bhubaneswar for the Financial Years 2010-11 and 2011-12 conducted during February 2013 it was observed that the assessee had availed Cenvat Credit of Rs.4,80,578/- on HR Sheets, HR Plates and MS Rods treating the said items/goods as inputs for manufacturing Sponge Iron and Billets. On the basis of an objection by the Auditor General(Odisha), Bhubaneswar, the Range Superintendent issued a letter dated 19.03.2013 alleging that the assessee had not declared it in time in the monthly ER-1 Returns submitted under Rule 12 of the Central Excise Rules, 2002 and Rule 9(7) of the Cenvat Credit Rules, 2004 to the jurisdictional Central

Excise Range Officer during the years 2010-11 and 2011-12. No declaration in respect of the receipt of the impugned goods and their manner of utilization inside the factory of the assessee had been submitted to the Department and accordingly it was alleged that the assessee had deliberately withheld information and concealed facts with an intent to wrongly avail credit and evade payment of duty. Show Cause Notice dated 07.05.2015 was issued proposing disallowance of the Cenvat Credit amounting to Rs.4,80,578/- along with applicable interest and penalty. In response to the Show Cause Notice the assessee submitted that they had filed their ER-1 returns for each month during the period under dispute and the details of Cenvat credit availed/utilized in each month had been categorically indicated therein. The Adjudicating authority disallowed the Cenvat credit as proposed in the Show Cause Notice and ordered for its recovery along with interest. He also imposed a penalty of equal amount under Rule 15 of the Cenvat Credit Rules, 2004 with Section 11AC of the Central Excise Act, 1944. On appeal, the Ld.Commissioner(Appeals) upheld the Order-in-Original and rejected the Appeal before him. Hence the present Appeal before the Tribunal.

2. The dispute before this Tribunal is whether Cenvat credit is admissible in respect of HR Sheets, HR Plates and MS Rods used for fabrication of Steel Formers which is in the nature of a consumable in the Appellant's induction furnace.

3. The usage of the impugned goods, as submitted by the Appellant is as under :-

> "<u>HR Sheet & Plates</u>
>
> Kindly refer to the process of melting in the Induction Furnace. It is submitted that the process of melting of Iron is carried out at a very high Temperature. To melt the iron, a Vessel known as ' Steel Former' is fabricated inside the factory. The Iron is melted inside this Steel Former. These HR sheet/ plates are used for making Former which is used in the furnace before initial heating begins.

Each former is of 1100 mm. diameter and 2350 height inside the former spider of 16 mm diameter rod is given. These former are itself consumed, while the furnace are in operation. These are used inside the induction furnace as steel "Former" pattern to gie shape and rigidness to ramming mass (referactory castable) during lining and maintenance work of furnace. When the Sponge Irons along with other raw materials are melted for manufacture of Billet, the said "Steel Former" is also melted and mixes with the molten metal. The final quantity of billet manufactured by us also contains the Iron of the weight of this Steel Former.

So, these HR sheet/ plates are used as inputs and becomes eligible for Cenvat Credit under CCR, 2004.

<u>MS Rods</u>

Ms Rod basically has three types of use in relation to manufacture of Billet according to their size and Specification.

(i) <u>MS Rod of 25 mm. size:-</u> MS Rod of 25mm size are cut into required length of 5-6 Mtr. And used for stirring of the molten metal in the furnace which ultimately melts and mixed up with the molten metal. These are continuously used while furnaces are in operation and these are consumed with molten metal for manufacture of steel billet.

(ii) MS Rod of 20/16 mm. size:- MS Rod of 20/16 mm. size are used to give support to the Former (use of Former given above) which is melted along with the former during the manufacture of Billet. These are also used for manufacturing of slag spoon, which are used to remove slag from the furnaces. 16 mm rods are also used for spider and hook of former which are placed in induction furnace with ramming mass.

(iii) MS Rod of 6 mm. size:- MS Rod of 6 mm. size are cut into required sizes normally of 1-4 inches (called as Chiller) and used at the beginning of Casting of Molten Metal for tripping down the temperature of liquid metal

> for facilitating casting of steel billets. Rods of 1.5 meter length are used to remove slag from the molten metal. During the course of above two processes, the same are melted and mixed with the Billet.
>
> So, these rods are used a inputs and become eligible for Cenvat Credit under CCR, 2004."

4. It is pertinent to note that the Show Cause Notice does not dispute the usage of the impugned goods. It is not in dispute that the impugned goods are used for manufacture of Steel Formers which is used as the liner of the Appellant's induction furnace and such Steel Formers get consumed in the process of the Appellant's manufacturing process. However, in the present case, Cenvat credit in respect of the impugned goods has been denied on the ground that Steel Formers "fall under Chapter 73 of the Central Excise Tariff Act, 1985". Upto 31.03.2011, the definition of 'input' covered "all goods except diesel and petrol used in relation to the manufacture of the final products whether directly or indirectly and whether contained in the final products or not" and included various other goods such as lubricating oil, coolant etc. With effect from 01.04.2011, the definition of input was amended to mean *inter alia,* as "all goods used in the factory by the manufacturer of the final product", unless specifically excluded. In the present case, the authorities below have categorically admitted that the impugned goods are used in the fabrication of Steel Former, which undisputedly gets consumed in the process of the Appellant's manufacturing of finished goods. I gainfully refer to the judgement of the Hon'ble Supreme Court in the case of Eastern Electro Chemical Industries Vs. CCE, Indore [2005 (181) E.L.T. 295 (S.C.)], wherein the issue involved was as to whether MS Casings can be construed as an input under the Cenvat Credit Rules. In that case also MS Casings were melted and mixed with other molded raw materials in the course of manufacturing finished goods. In this context, the Hon'ble Supreme Court referred to their decision in the case of CCE Vs. Ballarpur

Industries Ltd [1989 (43) E.LT. 804 (S.C.)] wherein it was held as under:-

> ***"5.*** *The question, in the ultimate analysis, the whether in input of Sodium Sulphate in the manufacture of paper would cease to be a "Raw-Material" by reason alone of the fact that in the course of the chemical reactions this ingredient is consumed and burnt-up. The expression "Raw-Material" is not a defined term. The meaning to be given to it is the ordinary and well-accepted connotation in the common parlance of those who deal with the matter.*
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> *The ingredients used in the chemical technology of manufacture of any end-product might comprise, amongst others, of those which may retain their dominant individual identity and character throughout the process and also in the end-product; those which, as a result on interaction with other chemicals or ingredients, might themselves undergo chemical or qualitative changes and in such altered form find themselves in the end-product; those which, like catalytic agents, while influencing and accelerating the chemical reactions, however, may themselves remain uninfluenced and unaltered and remain independent of and outside the end-products and those, as here, which might be burnt-up or consumed in the chemical reactions. The question in the present case is whether the ingredients of the last mentioned class qualify themselves as and are eligible to be called "Raw-Material" for the end-product. One of the valid tests, in our opinion, could be that the ingredient should be so essential for the chemical processes cluminating in the emergence of the desired end-product, that having regard to its importance in and indispensability for the process, it could be said that its very consumption on burning-up is its quality and value as raw-material. In such a case, the relevant test is not its presence in the end-product, but the dependence of the end-product for its essential presence at the delivery end of the process. The ingredient goes into the making of the end-product in the sense that without its absence the presence of the end-product, as such, is rendered impossible. This quality should coalesce with the requirement that its utilisation is in the manufacturing process as distinct from the manufacturing apparatus.*

> ***6.*** *The decision of this Court in Deputy Commissioner of Sales Tax, Board of Revenue v. Thomas Stephen & Co. Ltd., relied upon by Sri Ganguly, does not really advance the appellant's case. The observations therein to the effect that "consumption must be in the manufacture of raw material or of other component which go into the making of end-product" were made to emphasise the distinction between the "fuel" used for the kiln to impart the heat-treatment to ceramics and what actually went into the manufacture of such ceramics. The observations, correctly apprehended, do not lend themselves to the understanding that for something to qualify itself as "Raw-Material" it must necessarily and in all cases go into, and be found, in the end-product.*
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> ***7.*** *We also find no substance in the contention of Sri Ganguly that the process in which the Sodium Sulphate was used, was anterior to and at one stage removed from the actual manufacture of paper. Sri Sorabjee's answer to this contention is, in our view, appropriate. That apart the following observations in Collector of Central Excise v. Eastend Paper Industries Ltd. cited by Sri Ganguly himself is a complete answer:*
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> > *"....Where any particular process, this Court further emphasised, is so integrally connected with the ultimate production of goods that, but for that process, manufacture or processing of goods would be commercially inexpedient, articles required in that process, would fall within the expression `in the manufacture of goods'...."*
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> ***8.*** *On a consideration of the matter, we are persuaded to the view that the Tribunal was right in its conclusion that Sodium Sulphate was used in the manufacture of papers as "Raw-Material" within the meaning of the Notification No. 105/82-C.E., dated 28-1-1982."*

5. Similar view was also taken by the Tribunal in the case of CCE, Bolpur Vs. Sova Ispat Alloys Ltd. [2012 (286) E.L.T. 108 (Tri.Kol.)]. Since the functional usage of the metal casing in Eastern Electro Chemicals Industries (supra) and also MS Round in the case of Sova Ispat Alloys (supra) is almost identical to the Steel Formers in the

present case, the ratio of the aforesaid decisions are squarely applicable to the Appellant's case at hand.

In view of the above discussion and settled legal position the impugned orders cannot be sustained and are set aside. The Appeal filed by the Appellant is allowed with consequential relief, if any.

(Order pronounced in the open court on 13 October 2022.)

Sd/

(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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