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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 78901 of 2018

(Arising out of Order-in-Appeal No.113/SKS/BOL/CE/2017-18 Dated 26.03.2018 passed by Additional Director General (Taxpayer Services), Central Excise, Customs & Service tax, Kolkata.

M/s. Gagan Ferrotech Ltd.
(Formerly known as Gagan Commodities Pvt. Ltd.
Jamuria Industrial Estate, Vill.+P.O.-Ikra,
Dist.-Bardhaman (W.B.)-713362)

Appellant (s)

VERSUS

Commr. of CGST & Central Excise, Bolpur Commissionerate
(Nanoor, Chandidas Road, Bolpur, West Bengal-731204)

Respondent (s)

APPEARANCE :
Shri N. K. Chowdhury, Advocate for the Appellant
Shri S. Mukhopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75097/2023

Date of Hearing : 3rd March 2023
Date of Decision : 3rd March 2023

PER R. MURALIDHAR

The Appellant is manufacturer of Sponge Iron and TMT Bars. They have taken Cenvat Credit of Rs.1,20,000/- for the foundation bolts received by them during the period July 2007 under the Capital Goods heading. They have taken 50% of the Credit in 2007-08 and the balance 50% has been taken in 2008-2009. Show Cause Notice was issued seeking as to why the Cenvat Credit taken by them should not be denied and recovered on the ground that the foundation bolts would fall under Chapter 73 which is not covered under Capital Goods definition. The Appellant contested the Show Cause Notice both on merits as well as on account of limitation. They submitted that the foundation bolts have been classified under CET 8555.9000 by the manufacturer of the goods who has issued Invoice No. 45 dated 4/07/2007. Therefore, they have correctly taken the Cenvat Credit as capital goods by taking 50% credit in the first year and balance 50%

Credit in the second year. They also contested the Show Cause Notice on limitation submitting that since all the details were furnished in the ER-1 Returns, there is no suppression on their part. After due process, both the Lower Authorities confirmed the demand. Hence, the Appellant is before the Tribunal.

2. The Ld. Advocate submits that they have taken the credit correctly under the heading of Capital goods since the supplier had classified the same under CET8455. The classification adopted by the vendor at their end cannot be questioned by the Department at the end of present Appellant. Since foundation bolts are used in their factory in the course of manufacture of their dutiable finished goods, they have correctly taken the Cenvat Credit.

3. He further draws attention to the fact that the taking of Cenvat Credit was reflected in ER-1 Returns filed by them. Therefore, the Department cannot allege that the Cenvat Credit on the Foundation bolts have been taken by suppressing any facts. Accordingly, he prays that the OIA may be set aside even on account of limitation.

4. The Ld. Advocate also relies on the case law of CCE, BBSR-II Vs. A.C.C. Limited 2009 (248) E.L.T. 515 (Tri.-Kol) wherein, the Tribunal has held that the Cenvat Credit is eligible for the foundation bolts received and used in the course of manufacturing activity.

5. The Ld. Authorized Representative of the Department reiterates the findings of the Lower Authorities and submits that as the foundation bolts are to be classified under Chapter 73, the same cannot be treated as Capital goods as this CET is not mentioned as Capital Goods under Rule 2 (a) of the Cenvat Credit Rules, 2004. Therefore, the Cenvat Credit has been rightly denied to the Appellants.

5. Heard both sides.

6. Admittedly the foundation bolts have been received and used by the Appellant in their factory where they are manufacturing dutiable goods. As the vendor has classified the goods under CET 8455, the Appellant has taken the Credit on the foundation bolts as Capital goods, taking the Cenvat Credit in two different years. Even otherwise as per the definition of inputs in terms of Rule 2 (k) of CCR, 2004 as it stood at the material time, any item which is used in or in relation to the

manufacturing activity directly or indirectly will qualify for Cenvat Credit. In the case law of A.C.C. Ltd. cited supra, the Tribunal has held that the assessee will be eligible for the Cenvat Credit for the foundation bolts purchased by them. For coming to this conclusion, they have relied on the case law of Reliance Industry vs. CCE 2007 (210) ELT 422 (Tri.-Mum).

7. In view of the foregoing, the OIA is set aside on merits.

8. Coming to the limitation issue raised by the Ld. Advocate, it is an admitted fact that the Cenvat Credit taken on the foundation bolts has been reflected by them in their ER-1 Returns in 2007 and 2008. They have also enclosed copies of RG-23C records, wherein the Credit taken for the foundation bolt has been shown clearly. Therefore, the Department cannot claim that assessee has indulged in any suppression. The Show Cause Notice has been issued on 27/04/2011 for the Credit taken in 2007 and 2008. Since all the details of Cenvat Credit have been properly recorded by the Appellant in the ER-1, the question of suppression will not be sustainable. Therefore, I hold that the present confirmed demand for the extended period is legally not sustainable even on account of limitation.

9. The Appeal is allowed on the above terms with consequential relief.

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

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja