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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 77464 of 2019

Arising out of Order-in-Appeal No.17/CE/BBSR-GST/2019 Dated 29.04.2019 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.

M/s. Mideast Integrated Steels Limited
(Kalinga Nagar Industrial Complex,
Khurunti, Jaipur Road, Dist.-Jajpur, Odisha-755026)

Appellant (s)

VERSUS

Commr. of CGST & CX, Bhubaneswar Commissionerate
(C. R. Building, Rajaswa Vihar, Bhubaneswar-751007)

Respondent (s)

APPERANCE :
Mr. K. K. Acharya, Advocate for the Appellant
Mr. A. Roy, Authorized Representative for the Respondent

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

FINAL ORDER NO. 75310/2023

Date of Hearing : 2nd May 2023
Date of Decision : 2nd May 2023

PER R. MURALIDHAR

The Appellant is a manufacturer of Pig Iron, and granulated slag etc. The Audit Department pointed out that Service Tax was not being paid by them on account of 'Renting of Immovable Property'. The Audit pointed out that for the period Financial Year 2008 to 2009, they were required to pay Service Tax of Rs.4,44,960/-. As per the Learned Advocate, the same has been fully paid by way of Cenvat debit much before the issuance of the Show Cause Notice. Therefore, the Commissioner (Appeals), was in gross error in taking the stand that the Appellants are required to pay further 7.5% of the confirmed amount as pre-deposit for Hearing the Appeal. He dismissed their Appeal on the sole ground that pre-deposit condition has not been met. Accordingly, the Appellant prays that the Appeal may be decided on merits.

2. The Learned AR reiterates the findings of the Lower Authorities.

3. Heard both sides.

4. It is an admitted fact that the entire confirmed amount of Rs. 4,44,960/- has been paid by the Appellant by reversing their Cenvat Account. In *catena* of judgments. Tribunals have been regularly taking the view that any amount paid in the course of investigation and in the course of litigation either by way of debit in the current cash Account (PLA/GAR 7) or by way of Cenvat Credit debit, it should be taken as part of pre-deposit made by the Appellant to pursue their Appeal.

5. In this case, since it is clear that the Appellant has made the payment of Rs.4,44,960/- by debiting the Cenvat account, I feel that Commissioner (Appeals) has erred in not considering the same towards pre-deposit. As the Appeal was not decided on merits by the Commissioner (Appeals), I deem it fit to remand the matter the Commissioner (Appeals) to decide the issue on merits after noting that this Tribunal has held that amount of Rs.4,44,960/- paid by them through cenvat is to be considered as pre-deposit.

6. The Adjudicating Authority after following the Principles of natural justice, shall pass the necessary Order within 4 months of date of communication of this Order.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)

Member (Judicial)

Pooja