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

REGIONAL BENCH – COURT NO.2

Excise Appeal No.160 of 2009

(Arising out of Order-in-Original No.47/Commissioner/08 dated 26.12.2008 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Tata Steel Limited
Jamshedpur-831001

Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur
143, New Baradwari Sakehi, Jamshedpur-831001

Respondent

APPERANCE :

Dr.Samir Chakraborty, Sr.Advocate & Shri Abhijit Biswas, Advocate for the Appellant
Shri K.Chowdhury, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO...75520/2023

DATE OF HEARING : 31 .05.2023
DATE OF DECISION : 31 .05.2023

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that a show-cause notice was issued for contravention of Rule 9 of Cenvat Credit Rules, 2004 on the allegation that the appellants have availed irregular Cenvat Credit of Sponge Iron supplied by M/s NIPL during the period July 2005 to December, 2005, to the appellants. Therefore, an investigation was conducted and found that the appellants got manufactured on their behalf sponge iron by M/s NIPL. M/s NIPL was to take supply of iron ore from the appellants the

input required in manufacturing of sponge iron after processing/manufacturing of the finished goods i.e. sponge iron, they supplied the same to the appellants. During the investigation, it was observed that M/s NIPL has not processed the input received from the appellants and procured the same sponge iron and supplied to the appellants. Therefore, it was alleged that they are diverted the input and sent the sponge iron which was received by them from various parties. As the input on which M/s NIPL took credit were not actually used in the manufacture of finished goods but have directly sent to the appellants, the invoice issued by M/s NIPL cannot be constituted as an invoice of manufacture in terms of Rule 9 of the Cenvat Credit Rules 2004 for the purposes of availment of Cenvat Credit by the appellants. Further, as the goods have been directly sent from the manufacturer at Barbil and M/s NIPL had issued impugned invoices without sending any goods, they have attempted to pass on Cenvat Credit which was irregular and as such not applicable. Therefore, the duty was demanded as per show-cause notice from the appellants by denying the input credit and various penalties were also proposed to be imposed to both the applicants.

3. Dr. Samir Chakraborty, Ld. Advocate appearing on behalf of the appellants, submitted that the appellant has not violated any provision of Central Excise Act/Rules. Therefore, the Cenvat Credit cannot be denied. As the appellants have availed Cenvat Credit on the basis of invoices issued by the manufacturer i.e. M/s NIPL, the further submitted that all the input received from M/s NIPL were being tested by the appellants and if the inputs were not found up to the mark, the same

were returned to M/s NIPL and it is not the case of the Department that M/s NIPL is not a manufacturer nor they are not able to manufacture the impugned goods. Therefore, the Cenvat Credit taken by the appellants cannot be denied. To support his contention, he placed reliance on CCEx., Delhi II Vs. R.S. Industries reported I 2008 (228) ELT 347 (Del.) and Rishabh Industries Vs. CCEx. & ST, Goa reported in 2008 (84) RLT 120 (CESTAT-Mumbai).

4. On the other hand, the Ld.A.R. for the Revenue, reiterated the allegations made in the show-cause notice. He further submitted that it is on record that M/s NIPL has supplied the inputs procured by them form the open market, therefore, the input credit is not available. Moreover, the penalty is imposable on the appellants.

5. Heard the parties and considered the submissions and perused the records.

6. We find that it is not in dispute that M/s NIPL is having manufacturing facility and invoices have been issued by them. As per Rule 9 of Cenvat Credit Rules, 2004, an assessee can take the credit on the inputs received from a manufacturer on the strength of duty paid on the invoices. Whenever, the appellant has not found the inputs up to the mark, the inputs have been returned to M/s NIPL. Therefore, the case laws cited by the ld. Advocate in the cases of M/s R.S. Industries (cited supra) and M/s Rishabh Industries (cited supra) are applicable to the facts of the case.

7. In view of the above, we hold that the appellant is entitled to take the cenvat credit in terms of Rule 9 of the Cenvat Credit Rules, 2004 as

the appellant has taken the cenvat credit on the strength of invoices issued by the manufacturer.

8. Therefore, we do not find any merit in the impugned order, the same is set aside.

9. In the result, the appeal is allowed, with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(Ashok Jindal)
Member (Judicial)

Sd/-
(K.Anpazhakan)
Member (Technical)

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