

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

Excise Appeal No. 516 of 2012

(Arising out of Order-in-Original No. 39/Commissioner/CE/Haldia/Adjn/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Haldia).

M/s Ramsarup Lohh Udyog,

Unit of Ramsarup Industries Ltd.,
Tata Metalliks Road, Sahachak,
P.O.- Rakhajungle, Kharagpur,
West Bengal-721301

...Appellant (s)

VERSUS

Commissioner of Central Excise, Haldia.

Kolkata 25, Princep Street, 3rd Floor, Kolkata-700072.

..Respondent(s)

APPEARANCE :

None, for the Appellant

Shri P. K. Ghosh, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. ASHOK JINDAL MEMBER (JUDICIAL)

HON'BLE MR. K. ANPAZHAKAN MEMBER (TECHNICAL)

FINAL ORDER No...75529/2023

DATE OF HEARING : 29.05.2023

DATE OF DECISION : 29.05.2023

PER K. ANPAZHAKAN :

The appellant are engaged in the manufacture of mainly pig Iron falling under Central Excise Tariff Sub heading No.s 7201 10 00 and 7307 11 10, out of the raw materials mainly Iron ore falling under Central Excise Tariff Heading No. 2601.

2. The appellant had procured Angles, Channels, Beams and joists on payment of duty and availed the credit. They also purchased Welding Electrodes, MIG Wires and certain other things required for the manufacture of the machines and capital goods and availed Cenvat credit on the same. On 28/01/2009, a stock verification was conducted

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at the Appellant's factory by the Anti-Evasion Unit of Haldia commissionerate and they found a shortage of 189.50 M.T of pig Iron in comparison to the statutory records. Some other discrepancies were also noticed during the verification.

3. The Appellants were issued with a show- cause-cum-Demand Notice under C.No V(12)3/HAL/AE/Ramsarup/2009 dated 2.9.10 asking them to show-cause as to why

- (i) Central Excise duty amounting to Rs. 3,80,611/- on the shortage quantity of 189.50 M.T of Pig Iron shall not be recovered in terms of proviso to sub-section (1) of Section 11 A of the Central Excise Act, 1944. The amount already paid was proposed to be appropriated.
- (ii) the credit of Rs.5,82,44,793.93 availed and utilized wrongly on Angles, Channels, Beams, joists etc. in contravention of the provision of CENVAT Credit Rules, 2004 should not be denied and recovered from the appellants in terms of Rule 14 of the CENVAT Credit Rules 2004 read with proviso to Sub -section (1) of Section 11A of Central Excise Act, 1944.
- (iii) CENVAT credit amounting to Rs.33,63,796.67 wrongly availed and utilized during the period from 2005-2006 to 2009-10 on the Electrodes should not be denied and recovered .
- (iv) CENVAT credit of Rs. 23,670.68 on 73.66 M.T of Iron Ore Fines, which has been wrongly availed and utilized shall not be denied and recovered.

4. An order No.39/commissioner/CE Haldia /Adjn/2012 dated 30.3.2012 was passed by the Commissioner of Central Excise, Haldia comm'te. Kolkata, wherein he ordered as under:

- (i) Confirmed the demand of Rs. 3,80,611/- on the shortages. An amount of Rs. 3,22,150/- as duty Rs. 6,443/- as Education Cess and Rs.3,222/- as secondary & Higher Education Cess already paid was appropriated. He also imposed a penalty equivalent to

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the amount of duty on the shortage of the goods under rule 25(a),(b),& (d) of the Central Excise Rules 2002.

- (ii) Disallowed an amount of Rs.5,82,44,793.93 that was irregularly availed and utilized by the appellants on the Angles, Channels, Beams, Joists etc. He also charged interest and imposed penalty equivalent to the credit disallowed under Rule 15(2) of CENVAT Credit Rules 2004 read with section 11 AC of the Central Excise Act, 1944.
- (iii) Disallowed an amount of Rs.33,63,796.67, being the credit taken on welding Electrodes and MIG wires. He also charged interest and imposed a penalty equivalent to the credit disallowed.
- (iv) Disallowed an amount of RS 23670.68 availed on 73.66 M.T of Iron ore Fines which were not used in the manufacture of final products. He also charged interest and imposed a penalty of equivalent amount.

5. Aggrieved against the impugned order 30/03/2012 passed by the Commissioner, the Appellant is before us. In their submissions, the Appellant raised the following points:

- (1) The said order has been passed exparte in gross violation of the principles of natural justice without granting the reasonable opportunity of personal hearing.
- (2) The period of dispute in this case is from 2005-06 to 2008-09 in respect of alleged irregular availment of credit amounting to Rs.5,82,44,793.33 on the Angles, Beams, Channels, Joists etc. but the Show Cause Notice was issued on 2.9.10. Therefore, the entire demand is barred by limitation.
- (3) In support of their claim, the Appellant relied on the following decisions
 - (i) Jawahar Mills Ltd. reported in 2001 (132) ELT 3(S.C)
 - (ii) Hindusthan sanitary wire Industries Ltd. reported in 2001 (47) RLT 837,
 - (iii) Lloyds Steel Industries Limited reported in 2004 (64) RLT 732 (Tri-Mum)

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- (iv) India cement Limited reported in 2005 (129) ECR 222 (Tri Chennai)
- (v) Prism Cement reported in 2006(199) ELT 777(M.P)
- (vi) Divi's Laboratories Limited reported in 2006 (132) ECR 172(Tri-Bang),
- (vii) Uttam Sugar Mills Limited reported in 2006(216) ELT(Tri – Del),
- (viii) Aditya cement reported in 2008 (221) ELT 362 (Raj) Lloyd Metal & Engineering Limited reported in 2008(226) ELT 599,
- (ix) Bandana Global Limited reported 2008(88)RLT 176.

(4) The Appellant contended that it is a settled law that extended period cannot be invoked when the assessee acted on a bonafide belief. In support of this contention the Appellant cited the following decisions:

- (i) **Supreme labour industries reported in 2011(273) ELT 301 (Tri-Mum),**
- (ii) Continental Foundation Jt. reported in 2007 (216) ELT 177(S.C),
- (iii) Padmini products reported in 1989(43) ELT 195(S.C)
- (iv) Cosmic Dye Chemical reported in 1995(75)ELT 721(S.C), (v) Nestle India Ltd. reported in 2009(235) ELT 577(S.C)

(5) The said items of iron and steel products are the inputs used in the manufacture of capital goods and the said capital goods were in turn use in the manufacture of their final products. The said goods were also used in the pollution control system. The structure and effluent system are taken together will constitute a unit of pollution control system. Therefore, the finding of the adjudicating authority that the said iron and steels are neither capital goods nor inputs is erroneous and not maintainable in law.

(6) The demand of Rs.33,63,796/- on the welding Electrodes and MIG Wires cannot be denied as they were used in the manufacture of capital goods and in the repairs and maintenance of plant and machineries. In support of this contention they cited the decision in the case of Ambuja cement Eastern Limited –Vs- CCE, Raipur reported in 2010(256) ELT 690.

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(7) The demand of Rs.3,82,278/- in respect of shortage of 189.50 M.T of Pig Iron has not been supported by any documentary evidence.

(8) The demand in respect of 73.66 M.T of iron Ore Fines is not sustainable as they were used in the manufacture of final products.

6. The Ld. Departmental Representative reiterated the findings of the adjudicating authority in the impugned order.

7. Heard both sides and perused the appeal records.

8. We now proceed to analyse the demands confirmed on the four issues in the impugned as mentioned in para 4 above.

8.1 The demand of Rs. 3,82,278/- was confirmed on the shortages of 189.50 MT of Pig Iron. The shortage was noticed during the course of stock taking by the Anti Evasion wing of Haldia Commissionerate. The Appellant could not offer any valid reason for the shortages. In fact the Appellant has paid the duty and cess along with interest on the shortages. Hence, we uphold the demand of duty and cess along with interest on the shortages. Since there was no proper explanation for the shortages, we uphold the penalty imposed under section 11 AC of the Central Excise Act,1944.

8.2 The impugned order disallowed an amount of Rs.5,82,44,793.93 that was irregularly availed and utilized by the appellant on the Angles, Channels, Beams, Joists etc. We observe that the said items of iron and steel products were the inputs used in the manufacture of capital goods and the said capital goods were in turn used in the manufacture of their final products. The said goods were also used in the pollution control system. The structure and effluent system are taken together will constitute a unit of pollution control system.

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8.3 As per Rule 2(k) of Cenvat Credit Rules, 2002, Input includes goods used in the manufacture of capital goods which are further used in the factory of the manufacturer. In the present case, the Angles, Channels, Beams, Joists are the inputs used in the manufacture of capital goods namely, pollution control system. The structure and effluent system are taken together constitute a unit of pollution control system. Hence, it can be construed that the Angles, Channels, Beams are used in the manufacture of capital goods and hence they fall within the ambit of 'inputs' eligible for credit. Accordingly, we hold that the Appellant are eligible for the credit of Rs.5,82,44,793.93 availed on the Angles, Channels, Beams, Joists used in the manufacture of capital goods.

8.4 The impugned order disallowed credit of Rs.33,63,796.67, taken on welding Electrodes and MIG wires. The Appellant stated that the the said goods were used in the manufacture of capital goods and in the repairs and maintenance of plant and machineries and hence they are eligible for the credit. In support of their contention, they relied upon the decision in the case of Ambuja cement Eastern Limited -Vs- CCE, Raipur reported in 2010(256) ELT 690, wherein it has been held that CENVAT credit is available to welding electrodes used in the repair and maintenance of machineries. The relevant para in the order is reproduced below:

23. On the basis of aforesaid discussions, relying upon the decisions of the Rajasthan High Court in *Hindustan Zinc Ltd.*, Madras High Court in *India Cements Ltd.*, and Delhi Tribunal in *Birla Jute & Industries Ltd.*, which have been, subsequently, affirmed by the Supreme Court, we allow both the appeals, set aside the impugned orders and answer the substantial question of law in

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favour of the appellant-assessee and hold that welding electrodes used in repairs and maintenance of plant and machinery are inputs as defined under Rule 2(g) of the Cenvat Credit Rules, 2002 and thus, entitled for Cenvat credit.

In view of the above discussion, we hold that the Appellant are eligible for the credit of Rs33,63,796.67 on the welding Electrodes and MIG Wires used in repair and maintenance of machineries, as inputs' under Rule 2(k) of the CENVAT Credit Rules, 2004.

8.5 The impugned order disallowed an amount of RS 23670.68 availed on 73.66 M.T of Iron ore Fines on the ground that they were not used in the manufacture of final products. We observe that the Appellant has availed credit of 1498.87 MT of iron ore procured from M/s Tata Metalinks. The percentage content of Fines in this 1498.97 MT iron ore is 73.66 MT. The allegation of the department is that the 'iron ore fines' are 'poison' for the blast furnace and hence it cannot be used as it would damage the furnace. We observe that the allegation of the department is based on the statement of Mr. Chandan Kumar Chaki, General Manager of Tata Metalinks. The Appellant stated that the fines contained in the Ore procured by them from M/s Tata Metalinks were 'thicker' in size which can be used in their DRI plant to produce 'sponge iron'. We observe that the receipt and duty paid nature of the iron ore are not in dispute. The Appellant states that the iron ore fines received by them were thicker in size and can be utilised to produce 'sponge iron'. There is no evidence brought on record to disprove this claim. Since, the receipt and duty paid nature of the inputs are not in dispute and no other evidence

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brought on record to establish that the iron ore fines were not utilised in the manufacture of their final products, we hold that the Appellant are eligible for the credit of Rs 23680.68 availed on the iron ore fines.

9. In view of the above discussion, we uphold the demand of Rs. 3,82,278/- confirmed in the impugned order on the shortages of 189.50 MT of Pig Iron. The demand of interest and penalty on this count is also confirmed. We set aside the other demands on Angles, Channels, Beams Joists and welding electrodes, MIG Pipes and the demand on Iron Ore fines. Accordingly, the impugned order is modified on the above lines.

10. Accordingly, the appeal is disposed off.

(Dictated and pronounced in the open Court)

Sd/-

(Ashok Jindal)
Member (Judicial)

Sd/-

(K. Anpazhakan)
Member (Technical)

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