

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

REGIONAL BENCH – COURT NO.1

Excise Appeal No. 75047 of 2019

(Arising out of Order-in-Appeal No.457/HWH/CE/2018-19 Dated 09.11.2018 passed by Commissioner of CGST & Central Excise (Appeals-II), Kolkata)

M/s. Mangal Steel Enterprises Ltd.
(15/1F, Road, Belgachia, Howrah-711105)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Howrah
Commissionerate**
(15/1, Strand Road, Kolkata-700001)

Respondent

APPEARANCE :

Mr. S. P. Siddhanta, Consultant for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO.75795/2023

Date of Hearing : 21 June 2023

Date of Decision : 21 June 2023

PER R. MURALIDHAR

The Appellant was issued Show Cause Notice towards denial of Cenvat Credit of Rs.2,78,521/- taken by them on various inputs used by them in their factory premises. Audit was conducted in May 2014 for the period 2013-14. The Audit has listed 45 items on which the credit has been taken by the Appellant amounting to Rs.2,78,521/-. The Appellant have filed the detailed reply with Audit Team vide letter dated 22/05/2015 which was submitted to them on 13th June 2015. This letter contains item-wise receipt and issue details of the inputs in question. No further query was made by the Audit. The Department issued Show Cause Notice on be basis of the Audit observation on 23/8/2017 seeking reversal of Rs.2,78,521/- along with interest and penalty. After due process, the lower Authorities confirmed the demand. Being aggrieved by the impugned OIA, the Appellant is before the Tribunal.

2. The Learned Consultant appearing on behalf of the Appellant submits that specified items in Annexure A of the Show Cause Notice are

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inputs/consumables used by them in the manufacturing process. They have maintained the proper records in their computer towards purchase of these items, taking of these items in stock, the issue of these items from time to time to their production Department. All the payments have been done to the vendors through Banking Channels only. There is no dispute that the vendors have issued invoices with proper details of Central Excise Registration and there is no allegation that the Invoices are not falling within the definition of documents under Rule 9 of Cenvat Credit Rules, 2004.

3. The Learned Consultant also submits that though all the pleadings were taken before the lower Authorities, the same was not considered properly by them and the demands were confirmed. He relies on the case law of Tally Solutions Pvt. Ltd. Vs. Commissioner of Central Excise, Bangalore, 2020 (41) G.S.T.L. 520 (Tri.-Bang.). Thus, he submits that the impugned order may be set aside.

4. He also submits that the details of Cenvat Credit were properly reflected by them in their Monthly Returns. When the audit was conducted and issues were pointed out, they have filed the detailed letter on 01/06/2015 and no further query was raised by the Audit/Range/Division Officer. Therefore, the Department could not have issued a Show Cause Notice on 23/08/2017 after delay of more than two years from the date of making all the documents available to the Audit department. Therefore, he submits that the proceedings are liable to be held as legally unsustainable on account of limitation also.

5. The Learned AR submits that the Audit has come to know about the irregular availment of Cenvat Credit during their detailed verification and the Audit Team has given the full list of items on which such irregular Cenvat Credit has taken. He also draws my attention to the findings of the lower Authorities to the effect that all the submissions made by the Appellant were considered before the order was passed. He reiterates the findings of the lower Authorities.

6. Heard both sides and perused the documents.

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7. It is seen from the Annexure A of the Show Cause Notice that while 45 items have been listed towards Cenvat Credit of Rs.2,78,521/- the objection has been made in the Remarks column only for about five or six items. No remarks have been made by the Department as to why all these items are not eligible for the Cenvat Credit. Even the remarks made in some cases are not very serious in nature.

8. As submitted by the Learned Consultant, on account of the same items, the Appellant has filed their reply on 01/06/2015 giving item-wise purchase and issue for these items running into more than 40 pages. They have also given the details as to where the items are used in the manufacturing process. After receiving this letter on 01/06/2015, the Audit has not conducted any further verification or investigation. From the Show Cause Notice, it is observed that merely on the basis of Audit Report, the proceedings have been initiated. No investigation was conducted by the Department on the detailed reply filed by the Appellant with the Audit Team.

7. It is seen that there is no dispute about the eligibility of Cenvat Credit on account of the Invoices raised. No facts have been brought in to the effect that Appellant has not recorded these inputs in their records and there is no dispute that the appellant was not making payments for such inputs used in their industry. Department has not brought in any concrete evidence to deny the Cenvat Credit taken by the Appellant.

8. Considering the factual matrix, the Lower Authorities were in error in not addressing the item-wise details furnished by the Appellant. Therefore, the Appeal filed by the Appellant is allowed with consequential relief, if any, as per law.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja