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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.340 of 2009

(Arising out of Order-in-Appeal No.31-32/JSR/2009 dated 17.03.2009 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi.)

M/s. Anjaney Ispat Limited
(Plot No.6-10, Vth Phase, Industrial Area, Ghamaria, Jamshedpur)

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

WITH

Excise Appeal No.341 of 2009

(Arising out of Order-in-Appeal No.31-32/JSR/2009 dated 17.03.2009 passed by Commissioner(Appeals), Central Excise & Service Tax, Ranchi.)

Mr. Uday Singh, Director
M/s. Anjaney Ispat Limited
(Plot No.6-10, Vth Phase, Industrial Area, Ghamaria, Jamshedpur)

...Appellant

VERSUS

Commissioner of Central Excise, Jamshedpur

.....Respondent

(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI P.K. CHOUDHARY, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO. 75845-75846/2023

DATE OF HEARING : 20 April 2023
DATE OF DECISION : 27 June 2023

Per : K. ANPAZHAKAN :

The facts of the case in brief are that the Appellant company was engaged in the manufacture of Pig Iron. The Appellant stated that they installed a Mini Blast Furnace designed on new technology for low investment and high potentiality and adaptability and it was different from Blast Furnace of other manufacturers. For manufacturing Pig Iron, the appellant was using Iron Ore, Sponge Iron, Nut Coke, Lime Stone, Dolomite, L.D. Slag etc. The appellant was availing credit of the duty paid on those inputs.

2. The appellant was also acting as a Conversant Agent of M/s. TISCO Limited. In terms of the Agreement between them, M/s. Tata Steel was supplying BF Grade Iron Ore and Nut Coke, for manufacturing of Pig Iron. Other inputs were procured by the Appellant from the market and used the same in the manufacture of Pig Iron. Tata Steel Limited were paying conversant charges. In addition to supply of those materials, they were giving reimbursement of Central Excise duty and road freight.

3. The officers of the department visited the factory of the Appellant and it was revealed from the RG-23 Register maintained by them that they have received the input 'Sponge Iron' and availed Cenvat credit on the same. But, the Charging Report does not reflect the quantity of Sponge Iron charged in the Blast Furnace. Thus, the officers were of the view that 'Sponge Iron' was not required for manufacture of Pig Iron and the Appellant has wrongly taken the credit on the 'Sponge Iron' as their input without using the same in the manufacture of Pig Iron. The officers also found from the Costing Sheet, the cost of Sponge Iron was not taken into consideration by the Appellant. Accordingly, the officers initiated investigation to ascertain as to whether Sponge Iron is required along with other inputs viz. Iron Ore & Coke supplied by TISCO, for manufacture of Pig Iron.

4. M/s. Usha Martin Industries Ltd, another Conversant Agent of TISCO, vide their letter dated 04/05/2005, intimated the officers that they used sponge iron at the trial stage and informed that Coke consumption get reduced if sponge Iron is used in the Blast Furnace. Shri Uday Singh, Director of the Appellant in his statement dated 25/04/2005 justified the use of Sponge Iron for achieving desire coke

rate. Shri Singh also stated that the Sponge Iron was used to compensate the shortage of Coke supplied by TISCO. Shir B.M. Bhardwaj, Head of Raw Material Division, TISCO, in his statement dated 19/09/2005, admitted that the appellant had pointed out about the shortage of Coke under the parameter fixed in the aforesaid Agreement and requested for supply of more Coke informally but which was not agreed to by TISCO. Shri Bhardwaj also stated that they are not specific in regard to use of other inputs in the order. Thus, the investigation by the officers did not establish conclusively that Sponge Iron is an input in the manufacture of Pig Iron or not.

5. The appellant was issued with three show cause notices dated 09/11/2006 for the period 01/10/2005 to 31/12/2005, SCN dated 12/12/206 for the period January 2006 and SCN dated 04/01/2007 for the month of January 2006 on the basis of the allegation that they have availed irregular Cenvat credit on 'sponge iron' which has not been used in the manufacture of Pig Iron. The Adjudicating authority vide Order-in-Original dated 23/11/2007 decided all the three show cause notices and confirmed the demands made in the Notices. Penalty equal to the duty was also imposed on its Director Shri Uday Singh, under Rule 15(1) of the Cenvat Credit Rules, 2004. The present appeals filed by the Appellants are against this impugned order.

6. In their submission, the Appellant contended that Tata Steel did not supply all inputs required for manufacture of Pig Iron and they supplied short quantity of Coke in terms of the Agreement. They have to purchase other inputs from the market for manufacturing Pig Iron. Sponge Iron was also one of the inputs purchased by them as it helped in reduction of Coke consumption. They stated that the other Conversant Agent M/s. Usha Martin also procured other materials from market and also used Sponge Iron. The agreement did not mention any quantity of other inputs, which are essentially required to produce Pig Iron and also there was no restriction imposed by TISCO on using other materials. The Appellant stated that they started using Sponge Iron from 13/01/2004 and the Assistant Commissioner was intimated

about the use of Sponge Iron vide their letter dated 02/04/2004, as during trial it was found that it was economical to use Sponge Iron to control cost. The appellant was maintaining all records as prescribed under the Central Excise Act and maintaining Gate Register recording in and out of the goods, vehicle number, name of the party, quantity of the goods received, mentioning time and the same were properly signed by the Security Personnel. These Registers clearly indicate the receipt and proper accounting of the Sponge Iron procured and used by them in the manufacture of Pig Iron. Accordingly, they stated that the allegation of the department that they have not used the Sponge Iron in the manufacture of Pig Iron and the consequent proposal to deny the Cenvat credit availed on it, were only on presumption basis, without having any evidence to support it.

7. The Charge Report particularly dated 30/06/2004, does not show the charge of Sponge Iron, since on that date there was no stock of Sponge Iron. The issue of sponge iron was being reflected in the RG-23A document. The officer visited the factory had taken possession of some documents but did not take the sample of Sponge Iron, which was stored at the store of the company for manufacturing of pig iron. The literature 'Making Shaping and Treating of Steel' published by Association and Iron & Steel Engineers of United State Steel, relied upon by the investigation in support of their allegation that Sponge Iron was not viable for use in the manufacture of Pig Iron, did not represent the correct picture. The theoretical application of the said book cannot be made in the present case.

8. The Appellant stated that in his statement dated 12/05/2005, Mr. Uday Singh has mentioned that that approximately 152-200 of Kg. of Sponge iron is used for manufacture 1 M.T. Pig Iron. In the Central Excise Registration, the Appellant had mentioned only major inputs, which cannot exclude the use of other inputs. The appellant submitted that they had correctly taken Cenvat credit on inputs used in manufacturing of pig iron and hence they prayed for setting aside the impugned order.

9. The Ld A.R. reiterated the findings of the adjudicating authority and justified the denial of Cenvat credit.

10. Heard both sides and perused the appeal records.

11. We observe that in the impugned order the adjudicating authority relied upon the following grounds to conclude that the Appellant has not used the Sponge Iron in the manufacture of Pig Iron and denied the credit:

(i)The RG-23 Register shows the availment of credit, but the Charge Report did not indicate the issue of Sponge Iron for the manufacture of Pig Iron.

(ii)The officers found from the Costing Sheet, the cost of Sponge Iron was not taken into consideration.

(iii) The investigation has relied upon the literature 'Making Shaping and Treating of Steel' published by Association and Iron & Steel Engineers of United State Steel, to support of their allegation that Sponge Iron was not viable for use in the manufacture of Pig Iron.

(iv)In the Central Excise Registration, the Appellant has not mentioned Sponge Iron as one of their major 'inputs'

In view of the above grounds, the impugned order concluded that the Appellant has not utilized the Sponge Iron for the manufacture of Pig Iron and accordingly the credit was denied.

12. We observe that the above allegations of the department are only on presumption basis and not supported by any evidence, in view of the following explanations submitted by the Appellant against each of the above four allegations:

13. (i) The allegation of the department is based on their verification of the Charge Report particularly on one day, ie on 30/06/2004. The Appellant stated that the Charge Report on that day did not show any issue of Sponge Iron since on that date there was no stock of Sponge Iron.The issue of sponge iron was being reflected in the RG-23A document for the other days. The officer visited the factory had taken possession of some documents but did not take the sample of Sponge Iron, which was stored at the store of the company for manufacturing

of pig iron. We observe that just because there was no issue of Sponge Iron on the day of visit of the officers, it cannot be concluded that the Appellant has not used it at all in the manufacturing of Pig Iron. It is a fact that Sponge Iron is not must for manufacturing Pig Iron. The Appellant stated that they have used it as a trial basis only to reduce the usage of Coke. We observe that the statement of Usha Martin also agrees that the usage of Sponge Iron reduces the use of Coke. Since it is not an essential major input in the manufacturing of Pig Iron, we agree with the submission of the Appellant that on the basis of one day verification by the officers , it cannot be concluded that the Appellant has never used Sponge Iron in the manufacture of Pig Iron.

(ii) The Appellant stated that they were manufacturing Pig Iron for TISCO, on the basis of the inputs BF Grade Iron Ore and Nut Coke supplied by them and collect job charges. Therefore, the costing of the product was not required, as they were not marketing the same. The costing sheet seen by the officers was an internal document prepared to arrive at the job charges. Hence, they contended that the costing has no relevance to conclude whether Sponge Iron is an input or not and to decide the eligibility of availment of Cenvat credit. We agree with the Contention of the Appellant that on the basis of costing it cannot be decided whether the Appellant is eligible for Cenvat credit or not, since it was not their finished goods. They manufacture it for TISCO only for job charges.

(iii) The Appellant stated that the Literature 'Making Shaping and Treating of Steel' published by Association and Iron & Steel Engineers of United State Steel, relied upon by the investigation in support of their allegation that Sponge Iron was not viable for use in the manufacture of Pig Iron, does not represent the correct picture. The theoretical application of the said book cannot be made in the present case, to deny Cenvat credit.

We observe that the Appellant was also using the Sponge Iron only on trial basis with a view to reduce the cost by using less Coke. Hence, we agree with the contention of the Appellant that the Literature cannot be relied upon to deny the credit otherwise eligible to them.

(iv) The next objection raised in the impugned order was that in the Central Excise Registration, the Appellant has not mentioned Sponge Iron as one of their major inputs. The Appellant stated that at the time of taking the Registration, they have mentioned only the major inputs. This does not mean that they have not used the other inputs. We agree with the contention of the Appellant that Cenvat credit cannot be denied on the basis of this allegation.

14. We observe that the receipt of the input Sponge Iron into the factory was not in dispute. The RG-23 Register maintained by the appellant ,the Gate Register and the Stores Register containing all the details about the transport details of the Sponge Iron and issue of the same for manufacture of Pig Iron. The duty paid nature of the Sponge Iron was also not in dispute. Since receipt, utilization and duty paid nature of the input Sponge Iron was not in dispute, we hold that the Appellant are eligible for the Cenvat credit of the input Sponge Iron, as the same has been utilized in the manufacturing of finished goods Pig Iron. We observe that there was no violation committed by the Director Shri Uday Singh. Thus, we hold that no penalty is imposable on the Director under Rule 15(1) of Cenvat Credit Rules, 2004. Accordingly, we set aside the impugned order.

15. In view of the above discussion, we allow the appeals filed by the Appellant.

(Order pronounced in the open court on 27 June 2023.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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