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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.470 of 2011

(Arising out of Order-in-Original No.CCE/BBSR-I/35-36/2011 dated 08.03.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Rana Iron & Power Limited
(Vill. & P.O. Kulei P.S. Parjang-759146, Dist: Dhenkanal, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

WITH

Excise Appeal No.471 of 2011

(Arising out of Order-in-Original No.CCE/BBSR-I/35-36/2011 dated 08.03.2011 passed by Commissioner of Central Excise, Customs & Service Tax, Bhubaneswar-I.)

S.L.Hossain
C/o. M/s. Rana Iron & Power Limited
(Vill. & P.O. Kulei P.S. Parjang-759146, Dist: Dhenkanal, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-I

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar, Odisha.)

<u>APPEARANCE</u>

NONE for the Appellant (s)
Shri A.Roy, Authorized Representative for the Revenue

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

<u>FINAL ORDER NO. 75869-75870/2023</u>

DATE OF HEARING : 15 May 2023
DATE OF DECISION : 28 June 2023

Per : P.K. CHOUDHARY :

By the impugned order, the Ld.Commissioner has disallowed the Cenvat Credit of Rs.55,67,699/- taken by the appellant company during June 2004 to June 2009 and ordered for recovery of the same along with interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A & 11AB of the Central Excise Act, 1944. The Commissioner has also imposed penalty of equal amount under Rule 15 of the Cenvat Credit Rules. A penalty of Rs.5,000/- was also imposed on Shri S.L. Hossain under Rule 26 of the Central Excise Rules, 2002.

2. The Superintendent, Central Excise, Customs & Service Tax, Dhenkanal Range-I by his letters dated 29.09.2006, 11.10.2006, 17.11.2006 and 08.12.2006 asked the appellant to intimate details of credit taken on capital goods and to reverse the credit on non-admissible capital goods, if any.

3. The Appellant furnished the details of credit taken by its letter dated 10.11.2006. Subsequently, as required by the excise authorities, it was also furnished technical write-up of various capital goods along with photographs.

4. A statement of Mr.S.L.Hossain, the Project Manager of the Appellant was also recorded under Section 14 of the Act on 05.01.2007.

5. It was further submitted that in any event, the appellant is an employee of the company. In his capacity as Project Manager of the company, the appellant always discharged his duties and functions diligently. The Appellant never indulged in violation of any of the provisions of law in any manner warranting imposition of any penalty upon him. There was no evidence to suggest that the appellant was in any way personally responsible for availing or utilizing the disputed credit. The appellant is an engineer and does not deal with the excise matters of the company. The appellant encloses a copy of the reply dated 13.08.2009 to show cause notice filed by the Appellant.

6. We find that the Adjudicating authority has relied upon the larger Bench decision of the Tribunal in the case of Vandana Global Ltd. [2010 (253) ELT 440 (Tri.-LB)] for disallowing the Cenvat Credit availed on

the impugned steel materials used in the manufacture of the supporting structure for erection of pipe, supporting structure for installation of pipe, Platforms of ABC Kiln and cooler, Fabrication to support conveyor at power plant , ground hopper, day bin etc. Kiln cooler transfer structure, Platform of power plant and casings etc. being embedded to the earth, are not admissible to RSL.

7. We find that the issue is no more *res integra* and is squarely covered by the judgement of the Hon'ble Calcutta High Court in the case of M/s. Goyal MG Gases Pvt.Ltd. Vs. Union of India & Others reported in 2017 (8) TMI 1515 – CALCUTTA HIGH COURT, wherein it is categorically held that when Rule 8 (3A) is declared *ultra vires* by the different High Courts then the Revenue cannot take a different stand contrary to the said judgements. The Hon'ble Court further declared Rule 8(3A) as invalid which is not stayed by the Hon'ble Supreme Court.

8. We find that the Hon'ble Gujarat High Court in the case of Indsur Global Ltd. v. UOI [2014 (310) E.L.T. 833 (Guj.) has declared the words "without utilizing Cenvat Credit" under Rule 8(3A) as *ultra vires* which means that the assessee can discharge duty by utilizing Cenvat Credit which is what exactly has been done in the instant case by the Appellant.

9. We find that the said judgment has been followed by the Hon'ble Calcutta High Court in the case of Goyal MG Gases Pvt.Ltd. v. UOI cited (supra) which is not stayed by the Hon'ble Supreme Court. The Hon'ble Calcutta High Court in the said case, has declared the provisions of Rule 8(3A) ibid as invalid and further has held that the Revenue cannot take a different stand and parity has to be extended to the assessee.

10. We find that the demand in the instant case has been raised for contravention of Rule 8(3A) ibid restricting utilization of Cenvat credit during the period of default which provision has been declared *ultra vires/*invalid by Court, hence the demand cannot be sustained and the Appeal, thus, succeed on this count.

11. We accordingly, set aside the impugned order and allow the appeals with consequential reliefs, if any.

(Order pronounced in the open court on 28 June 2023.)

Sd/

(P.K. CHOUDHARY)
MEMBER (JUDICIAL)

Sd/

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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