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

REGIONAL BENCH – COURT NO.1

Excise Appeal No. 76781 of 2018

(Arising out of Order-in-Appeal No. 25/KA-I/2018 dated 21.02.2018 passed by Commissioner of Central Excise. Asansol-I Division, Bolpur.)

M/s Rajshri Iron Industries Pvt. Ltd.
(Jamuria Industrial Area, Seikhpur, P.O.-Nandi, Dist.-Burdwan)

...Appellant

VERSUS

Commr. of CGST & CX, Bolpur Commissionerate
(Sian, Nanoor Chandidas Road, P.O.- Bolpur, Dist.- Birbhum)

...Respondent

APPERANCE :
Mr. Tarun Chatterjee Advocate & Mrs. Binita Pandey, C.A. for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:
HON'BLE MR. R. MURALIDHAR MEMBER(JUDICIAL)

FINAL ORDER No......76061/2023

DATE OF HEARING : 28.06.2023
DATE OF DECISION : 28.06.2023

PER R. MURALIDHAR :

The appellant is manufacture sponge and iron and steel items. They have imported coal and cleared the same on payment of the Custom Duty and CVD in terms of Notification No.12/2012-CUS dated 17/03/2012. As per this Notification, the importer is required to pay CVD of @1% when the coal is imported. The appellant has taken the Cenvat Credit of the CVD so paid. The Department initiated proceedings against the appellant on the ground that they are ineligible to avail the Cenvat Credit of the CVD paid at the time of import. The appellant in the course of the litigation proceedings, deposited Excise Duty Rs.28,05,971/- along with interest of Rs.4,36,756/- and penalty of Rs.2,93,338/- and continued to litigate the matter.

2. Subsequently, having come to know that they are not required to reverse the Cenvat Credit, the appellant filed a refund claim for Rs.35,36,064, on the

ground that they have paid this amount under a mistaken interpretation. Both the lower authorities rejected their refund claim. Being aggrieved, the appellant is before the Tribunal.

3. Ld Advocate submits that the Department has erroneously relied on Notification No.12/2012 CX dated 17/03/2012, wherein as per Condition 25, no Cenvat Credit can be availed. He submits that in the appellant's case the correct Notification applicable could be Notification No.12/2012 CUS dated 17/03/2012, wherein it is specified that CVD is to paid @1% and there is no condition barring in the importer from taking the Cenvat Credit. He relies on the case law of Hindalco Industries Ltd. Vs. GST-Bhopal – 2018(363)ELT 1085 (Tri – Del), Shyam Steel Industry Ltd. Vs. CCE Coal – 2022 (382) ELT 366 (Tri-Kol) which has been affirmed by the Calcutta High Court vide CCE Vs. Shyam Steel Industry Ltd. – 2022(382)ELT329.

4. The Ld. AR reiterates the findings of the lower authorities and justifies the rejection of refund claim.

5. Heard both sides and perused documents and considered the submissions.

6. It is seen from Notification No.12/2012 CUS that it is clearly specified that one per cent CVD is required to be paid. There is no condition that such CVD paid can't be taken as Cenvat Credit. Coming to Notification No.12/2012 CX it is seen that in respect of the goods in question, the percentage of Excise Duty to be paid is @1% subject to Condition 25 of the Notification. This condition specifies that no Cenvat Credit should have been taken for input and input services used in the manufacturer of these goods. From this Notification, it is clear that the it has been issued in respect of manufacturer of the goods. In case the manufacturer wants to clear the coal on concessional rate @1%, he is not eligible to take the Cenvat Credit of input and inputs services. The Department is error in applying this Notification to the appellant who is the receiver of the goods. Apart from this, the very issue was before the Tribunals in the case of Hindalco Industries cited supra, the Tribunal has held as under :-

> ***"5.*** *On careful consideration of the submissions made by both the sides, I find that the sole reason to deny Cenvat credit to the appellant is that the authorities below has taken into consideration Notification No. 12/2012-CE., dated 17-3-2012. The authorities below have not considering the Notification No. 12/2012-Cus., dated 17-3-2012. If same is taken into consideration and duty paid under the said notification, there is no bar for availment of Cenvat credit in terms of Rule 3(7) of Cenvat Credit Rules, 2004. Therefore, I hold that authorities below has applied wrong provision to deny Cenvat credit to the appellant. Therefore, Cenvat credit cannot be denied to the appellant. In that circumstances, I hold that the appellant has correctly availed the Cenvat credit of CVD paid on imported coal in terms of Rule 3(7) of Cenvat Credit Rules, 2004." [Emphasis Supplied]*

7. In the case of Shyam Steel Industry Ltd. cited supra, the Hon'ble Tribunal has held as under :-

> ***"5.****We find that the crux of the issue before us relates to admissibility of Cenvat credit of CVD on imported coal cleared at the rate of 1%/2% under Sl. No. 123 of the Customs Notification No. 12/2012-Cus., dated 17 March, 2012 as amended by Customs Notification No. 12/2013-Cus., dated 1 March, 2013. There is no restriction in these notifications unlike Sl. No. 67 of Central Excise Notification No. 12/2012, dated 17 March, 2012 in so far as the availment of Cenvat credit on coal is concerned. The credit of CVD is available under Rule 3(1)(vii) of the CCR and the proviso to Rule 3(1)(i) restricting credit in case of coal cleared under Excise Notification No. 12/2012, dated 17 March, 2012 cannot impliedly be read into when the rate of CVD has not been borrowed from the excise notification but has a generally applied rate on its own. There is considerable merit in the contention of the Appellant that there is no room for any intendment in taxing statutes which deserves a strict interpretation. Even otherwise generally applied rate of CVD (1% upto 28 February, 2013 and 2% thereafter under the Customs notification) and the concessional excise duty rate on domestically manufactured goods (1% all throughout without Cenvat under the excise notification) were not uniform and in any event,*

> *the expression "equivalent" appearing in Rule 3(1)(vii) of the CCR for quantification of CVD could not be restricted ignoring the tariff rate of excise duty of 6% on domestically manufactured coal."* *[Emphasis Supplied]*

8. Since the issue is squarely covered by these decisions, respectfully following them, I allow the Appeal with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-

(R. Muralidhar)
Member (Judicial)

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