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

REGIONAL BENCH - COURT NO.1

Service Tax Appeal No.387 of 2012

(Arising out of Order-in-Original No.20/Commr/BOL/12 dated 16.04.2012 passed by Commissioner of Central Excise, Bolpur.)

M/s. Super Smelters Limited
(Kanjilal Avenue, Durgapur-713210, West Bengal.)

...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

<u>APPEARANCE</u>

NONE for the Appellant (s)
Shri P.K.Ghosh, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI ASHOK JINDAL, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

<u>FINAL ORDER NO. 76386/2023</u>

DATE OF HEARING : 4 August 2023
DATE OF DECISION : 4 August 2023

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order wherein Cenvat credit on various steel items have been denied on the appellant on the premise that they do not qualify as input in terms of Rule 2(k) of Cenvat Credit Rules, 2004.

2. The facts of the case are that the appellant manufacturing Billets and Rolled Products of Iron & Steel and paying duty thereon. During the period 01.04.2005 to 31.03.2009, the appellant purchased Cobble Plates, Angles, Channels, Joists, HR Coil, HR Plates and Sheets and availed Cenvat Credit thereon. The Revenue is of the view that the said steel items do not qualify as inputs in terms of Rule 2(k) of Cenvat

Credit Rules, 2004 and/or capital goods in terms of Rule 2(a) of Cenvat Credit Rules, 2004. As the said steel items were the articles used for construction of plant and thereby, cannot qualify as Inputs or Capital Goods and the credit so availed and utilized by them appeared to be irregular and is liable to be recovered from them in terms of the provisions of Rule 14 of the said Rules read with the proviso to sub-section (1) section 11A of the Central Excise Act, 1944. In view of this, Cenvat credit sought to be denied to the appellant by issuance of show cause notice dated 18.03.2010. The matter was adjudicated, Cenvat credit was denied. Aggrieved from the said order, the appellant is before us.

3. Today, when the matter was called, none appeared on behalf of the appellant, but after hearing the Ld.AR for the department we find that the matter can be disposed of at this stage. Therefore, the matter is taken up for consideration.

4. Heard the Ld.AR for the department.

5. We find that the appellant has explained the usage of the steel items which were used for fabrication of ETO Cranes, Gasified Plant, Bunkers, Hydraulic Boxes, Hopers, Water Sealing System, Roller Conveyor System, Turning Wall, Cages of Block Mill, Foots of Bunkers & Inspection Window Systems, fabrication of Motor and Pumping Station, Safety Cages of Block Mill, Extension of existing EOT Cranes from existing Rail length to the further water scale pit level. As all the steel items have been used by the appellant for fabrication of their plant and machinery which was ultimately used in manufacture of the final product, in that circumstances, relying on the decision of the Hon'ble Chhattisgarh High Court in the case of Vandana Global Ltd. v. Commissioner of C.Ex. & Cus, Raipur [2018 (16) G.S.T.L. 462 (Chhattisgarh)], wherein the Hon'ble High Court has held as under:-

> ***"5.*** *The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in Mundra Ports & Special Economic Zone Ltd. - 2015 (39)*

S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows :

> *"We do not find that amendment made in the Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification on particular thing or goods and/or input and as such, the amendment could operate only prospectively."*

6. *That view has been quoted with approval by the Madras High Court in M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal (CMA 3814/2014 and connections) decided on 10-7-2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. M/s. Thiruarooran Sugars also considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech.*

7. *Section 37 of the Central Excise Act, 1944; for short, 'the Act', is a rule making power. Section 37(2)(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods. Section 37(2A) of the Act - The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs. Though the power to make rules include the power to give retrospective effect, while doing so the provision under consideration is neither made retrospective nor could it be treated as one.*

8. *We are in complete agreement with the ratio of Mundra Ports (supra) and M/s. Thiruarooran Sugars (supra) on all fours.*

> ***9.*** *Resultantly, we answer the questions formulated in these appeals in favour of the assessees and against the Revenue."*

We hold that the appellant is entitled for Cenvat credit on the said steel items, therefore, we do not find any merit in the impugned order. The same is set aside.

In result, the appeal is allowed with consequential relief, if any.

(Operative part of the order was pronounced in the open Court.)

Sd/
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

sm