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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.75500 of 2017

(Arising out of Order-in-Original No.170-71/Commr/2016 dated 16.12.2016 passed by Commissioner, Central Excise & Service Tax, Jsmshedpur.)

M/s. Bhagwati Oxygen Limited
(Moubhandar, Ghatsila, District-East Singhbhum, Jharkhand-832103.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand-831001.)

WITH
Excise Appeal No.75613 of 2017

(Arising out of Order-in-Original No.170-71/Commr/2016 dated 16.12.2016 passed by Commissioner, Central Excise & Service Tax, Jsmshedpur.)

M/s. Bhagwati Oxygen Limited
(Moubhandar, Ghatsila, District-East Singhbhum, Jharkhand-832103.)
...Appellant

VERSUS

Commissioner of Central Excise & Service Tax, Jamshedpur
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand-831001.)

AND
Excise Appeal No.75043 of 2020

(Arising out of Order-in-Appeal No.400/JSR/2019 dated 08.11.2019 passed by Commissionier(Appeals) of Central GST & Central Excise, Ranchi.)

M/s. Bhagwati Oxygen Limited
(Moubhandar, Ghatsila, District-East Singhbhum, Jharkhand-832103.)
...Appellant

VERSUS

Commissioner of CGST & CX, Jamshedpur Commissionerate
.....Respondent
(Outer Circle Road, Bistupur, Jamshedpur, Jharkhand-831001.)

APPEARANCE

Shri Saurabh Bagaria, Advocate for the Appellant (s)
Shri S.Mukhopadhyay, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76564-76566/2023

DATE OF HEARING : 30 August 2023
DATE OF DECISION : 30 August 2023

Per : ASHOK JINDAL :

All the appeals are having common issue, therefore, all are disposed off by a common order.

2. The facts of the case are that the appellants were availing cenvat credit on liquid oxygen purchased by them and the same is supplied to their buyers through pipeline. The case of the department is that the appellant was not doing any manufacturing activity on the liquid gas to be sold by them as gaseous oxygen supplied through pipeline, therefore, they are not entitled to take cenvat credit on liquid gas purchased by them in terms of Rule 2(k) of Cenvat Credit Rules, 2004. In view of this, various show cause notices were issued to the appellant to deny cenvat credit on liquid gas, alleging that the activity undertaken by the appellants does not amount to manufacture, therefore, they are not entitled to take cenvat credit on liquid gas as input. The matters were adjudicated. Demand on account of denial of cenvat credit was confirmed along with interest and penalty was also imposed. Aggrieved from the said orders, the appellant is before us.

3. The Ld.Counsel for the appellant submits that the appellant is availing cenvat credit on liquid gas and paying duty on the gas sold by them through pipeline. If their activity does not amount to manufacture, in that circumstances, what duty they have paid, the same shall be treated as reversal of cenvat credit as held by the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) E.L.T. 294 (Bom.)].

4. On the other hand, the Ld.AR reiterated the findings of the impugned order.

5. Heard the parties, considered the submissions.

6. We find that there is no dispute with regard to the fact that the appellant is availing cenvat credit on liquid gas and paying duty at the time of clearance of the said gas through pipeline to their buyers.

7. In that circumstances, the decision of the Hon'ble High Court of Bombay in the case of Ajinkya Enterprises (supra) is applicable to the facts of the present case, wherein the Hon'ble High Court has observed as under:-

> ***"10.*** *Apart from the above, in the present case, the assessment on decoiled HR/CR coils cleared from the factory of the assessee on payment of duty has neither been reversed nor it is held that the assessee is entitled to refund of duty paid at the time of clearing the decoiled HR/CR coils. In these circumstances, the CESTAT following its decision in the case of Ashok Enterprises - 2008 (221) E.L.T. 586 (T), Super Forgings - 2007 (217) E.L.T. 559 (T), S.A.I.L. - 2007 (220) E.L.T. 520 (T) = 2009 (15) S.T.R. 640 (Tribunal), M.P. Telelinks Limited - 2004 (178) E.L.T. 167 (T) and a decision of the Gujarat High Court in the case of CCE v. Creative Enterprises reported in 2009 (235) E.L.T. 785 (Guj.) has held that once the duty on final products has been accepted by the department, CENVAT credit availed need not be reversed even if the activity docs not amount to manufacture. Admittedly, similar view taken by the Gujarat High Court in the case of Creative Enterprises has been upheld by the Apex Court [see 2009 (243) E.L.T. A121] by dismissing the SLP filed by the Revenue."*

8. Admittedly, the appellant has paid duty on the liquid gas on which they have availed cenvat credit and if the said activity does not amount to manufacture, in that circumstances, the duty paid by the appellant shall be treated as reversal of cenvat credit.

9. In that circumstances, relying on the decision of the Ajinkya Enterprises (supra), we hold that the appellant are not required to reverse cenvat credit as held by the authorities below in the impugned

orders. Therefore, the impugned orders are set aside and in the result, the appeals are 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