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

REGIONAL BENCH - COURT NO.1

Excise Appeal No.142 of 2012

(Arising out of Order-in-Original No.CCE/BBSR-II/NO-49/COMMISSIONER/2011 dated 22.12.201 passed by Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-II.)

M/s. Adhunik Metallika Limited
(Chandrihariharpur, P.O. Khuarmunda, Dist: Sundergarh, Odisha.)

...Appellant

VERSUS

Commissioner of Central Excise, Bhubaneswar-II

.....Respondent

(C.R. Building, Rajaswa Vihar, Bhubaneswar-751007, Odisha.)

APPEARANCE

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)

FINAL ORDER NO. 76620/2023

DATE OF HEARING : 8 September 2023
DATE OF DECISION : 8 September 2023

Per : ASHOK JINDAL :

By way of this appeal, the appellant is challenging denial of cenvat credit on various steel items availed during the period April 2005 to June 2009 along with interest and imposing equivalent amount of penalty.

2. The facts of the case are that the appellant was engaged in the manufacture of various iron and steel items during the period April 2005 to June 2009. The appellant availed cenvat credit on various items namely M.S. angles, beams, channels, plates, flats, M.S. Joist, H.R. Coils, chequered coil, Defective plates, PMP plates, H.R. Plates,

HSM plates, Steel plates, Semi rolled steel plates, H.R. Sheets, Mixed plates, Steel plates, C.R. Coils, G.C. Sheets, Flat Mills plates etc treating them as inputs. Revenue was of the view that the above items did not appear eligible for cenvat credit as inputs for the goods manufactured by the appellant, therefore enquiry was conducted regarding the use of the above said items and it was found that most of the items were used for fabrication of supporting structures and installation of the plant and buildings. As the supporting structures have been permanently embedded to earth, which rendered them immovable, they were not excisable goods. Therefore, the above items appear to be ineligible as inputs and capital goods under rule 2(k) and rule 2(a)(A) of the Cenvat Credit Rules, 2004. Therefore, a show cause notice dated 18.03.2010 was issued to the appellant to deny the cenvat credit on the above-said steel items and the matter was adjudicated, demand on account of denial of cenvat credit was confirmed along with interest and penalty equivalent to the amount was also confirmed. Against the said order, the appellant is before us.

3. None appeared on behalf of the appellant. Considering that it is an old matter and can be decided at this stage, therefore, we have taken up the appeal for consideration.

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

5. Heard the Ld.AR for the department and perused the records.

6. On perusal of the record, we find that these items have been used by the appellant for fabrication of support structures. Without the use of those support structures the appellant was not able to manufacture their final product, in that circumstances the said support structures are directly or indirectly used in manufacturing of the final product manufactured by the appellant, therefore, in terms of Rule 2(k) of Cenvat Credit Rules, 2004, the appellant is entitled to take cenvat credit as held by the Hon’ble Chhatisgarh High Court in the case of Vandana Global Ltd. v. Commissioner of C.Ex. & Cus., Raipur [2018

(16) G.S.T.L. 462 (Chhasttisgarh)], 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 :*
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> > *"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."*
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> ***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.*
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> ***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."*

7. In view of the above, we find that the appellant has correctly taken cenvat credit on support structures, in that circumstances, the impugned order is set aside and 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)

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