IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.1

Excise Appeal No.139 of 2012
(Arising out of Order-in-Original No.88/Commr/BOL/11 dated 14.12.2011 passed by Commissioner of Central Excise, Bolpur.)

M/s. Shree Parashnath Re-Rolling Mills Limited
(3511-P, Dr.B.C. Roy Avenue, Durgapur-713201)
...Appellant

VERSUS

Commissioner of Central Excise, Bolpur
.....Respondent
(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal, Pin-731204.)

APPEARANCE

Shri H.K.Pandey, 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. 76621/2023

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

Per : ASHOK JINDAL :

The appellant is in appeal against the impugned order denying cenvat credit on various steel items along with interest and equivalent amount of penalty.

2. The facts of the case are that the appellant is manufacturer of rolled products like Angles, Channels, Joist, TMT Bar etc.. During the period 2006-07 and 2007-08, the appellant made extension of their factory by installing of a new induction furnace unit for manufacture of MS ingots as well as manufacture of wire rod during the period 2010-11. For that, the appellant constructed a new shed for manufacturing and storing. For the said activity the appellant used huge quantity of their manufactured rolled products like angles, channels, TMT bars, joist etc.. They used other manufacturing products for captive

consumption and did not pay central excise duty on the ground that they were entitled to have the benefit of exemption notification No.67/95-CE dated 16.03.1995. During the course of investigation, the appellant submitted that the said items were used for manufacture of cooling bed, roughing mill complex, intermediate mill complex and finishing mill complex, therefore, these are articles of capital goods. For the article used during the period 2010-11, the appellant stated that part of the items were purchased from outside and the same were used for manufacture of capital goods and rest of the quantity were used for construction of shed structure which were used for manufacture of EOT Parts, Conveyer system, Cooling bed, Reform Tub, Pulpit, Pollution equipment etc for their Block Mill, Steel melting shop, Section mill etc., therefore, they are capital goods. To that effect, they have submitted the Chartered Engineer Certificate and from the Chartered Engineer Certificate it was found that all the goods like Cooling Bed, Roughing Mill Complex, Intermediate Mill Complex etc. claimed by the appellant as capital goods are not considered as capital goods since those goods are a totality of cutting , sizing and welding of Angle, Channel, Joist etc. and fixing the same to the earth which do not qualify the essential characteristic of goods i..e movability and marketability. Therefore, the word 'goods' for the purpose of levy of duty must satisfy two requirements – 1) they must be movable and 2) they must be marketable. Therefore, it was alleged by the department that the appellant has willfully evaded the payment of duty on the goods cleared for captive consumption and mis-utilized the benefit of Notification No.67/95-CE(NT) and a show cause notice dated 16.06.2011 was issued to the appellant to demand duty on the above-said steel items used captively for manufacturing of their so called capital goods which were embedded to earth and along with interest and equivalent amount of penalty was also imposed. Aggrieved from the said order, the appellant is before us.

3. The Ld.Counsel for the appellant contested the issue on merits as well as limitation. With regard to eligibility of cenvat credit on the items

used for manufacture of capital goods, it is his contention that the utilization of the questioned goods for manufacture of capital goods was duly certified by the qualified Chartered Engineer and the said certificate determines the quantity of inputs used for the manufacture of part of goods unitwise which includes Parts of EOT crane for Furnace, Caster Machine, Material Handling, Pollution Equipment etc. in different section. It was also observed by the adjudicating authority that the impugned goods was used for extension of plant and machinery, but not for manufacture of particular plant or machine. He further submits that the use and utilization of the impugned goods in the appellant’s factory is not disputed. The dispute is about the categorization of the goods as to whether those qualifies to be capital goods or not. The Chartered Engineer certificate provides details of use. Credential of the certificate cannot be overruled without bringing on record a parallel opposite opinion from another expert, therefore the Chartered Engineer certificate is acceptable. He further submits that in terms of the decision of 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)], the appellant is entitled to avail cenvat credit on these items as same are used for fabrication of structural and capital goods as input for capital goods, therefore, on that ground the appellant is entitled to avail cenvat credit. Further it is his contention that extended period cannot be invoked in the facts and circumstances of the case as the availment of cenvat credit was in the knowledge of the department itself and the show cause notice has been issued by invoking extended period of limitation, therefore, part of the demand is barred by limitation.

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

5. Heard the parties, considered the submissions.

6. The sole issue in this case is that items manufactured by the appellant namely Angles, Channels, Joist, TMT Bars etc. used captively for fabrication of capital goods/support structures which were

embedded to earth, the appellant liable to pay duty on the said product or not.

7. We find that it is not disputed by the revenue that these items have been used by the appellant for fabrication of capital goods which has been captively consumed for fabrication of capital goods and support structures which were ultimately used in manufacture of their final product i.e. ingot.

8. Therefore, relying on the decision of the Hon'ble Chhatisgarh High Court in the case of Vandana Global Ltd. (supra), wherein the Hon'ble High Court has observed 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.

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 not required to pay duty on the items in question which has been used by them captively for fabrication of support structures and capital goods as inputs, which has been ultimately used for manufacture of their final product, i.e. M.S. ingots & wire rods. Therefore, 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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