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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.492 of 2012
(On behalf of Appellant)

(Arising out of Order-in-Original No.20/Commr./2012 dated 28.03.2012 passed by Commissioner of Central Excise & Service Tax, Jamshedpur)

M/s Nilachal Iron & Power Limited
5, Bentinck Street, Kolkata-700001

Appellant

VERSUS

Commissioner of CGST & Excise, Jamshedpur
143, New Baradwari, Sakchi, Jamshedpur-831001

Respondent

APPERANCE :

Ms.Shreya Mundhra, Advocate for the Appellant
Shri S.Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NO…76733/2023

DATE OF HEARING : 15.09.2023
DATE OF DECISION : 15.09.2023

Per Ashok Jindal :

The impugned demand has been confirmed against the appellant by denying cenvat credit on iron ore pellets purchased by the appellant from M/s Jindal Steel & Power Limited.

2. The facts of the case are that the appellant is a manufacturer of sponge iron and the appellant purchased iron ore for use as an input in the manufacture of sponge iron.

2.1 In April, 2010, the appellant purchased duty paid iron ore pellets from M/s Jindal Steel & Power Limited for use as input in the manufacture of sponge iron. The appellant availed cenvat credit on the iron ore pellets and utilized such credit for payment of duty on its final product.

2.2 On 25.01.2011, a letter was issued to the appellant by the respondent, wherein it has been seen that since ores falling under Heading Nos.2601 to 2617 of the First Schedule to the Central Excise Tariff Act, 1985 were fully exempted from payment of Central Excise duty un-coditionally in terms of Notification No.4/2006-CE dated 01.03.2006 and in view of specific bar under Sub-section (1A) of Section 5 of the Central Excise Act,1944, the appellant was not entitled to avail Cenvat credit of duty paid on iron ore pellets falling under Sub-heading No.26011210.

2.3 Thereafter, a show-cause notice dated 28.04.2011 was issued to the appellant alleging that the appellant has wrongly availed the Cenvat credit of Central Excise duty paid and has deliberately and willfully contravened the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004, with the intent to evade payment of duty as the iron ore pellets were exempted from payment of duty under Notification No.4/2006-CE dated 01.03.2006. Therefore, the show-cause notice proposed for reversal of cenvat credit along with interest and to pay penalty also.

2.4 The matter was adjudicated. The demand on account of reversal of cenvat credit was confirmed.

2.5 Against the said order, the appellant is before us.

3. The ld.Counsel for the appellant, submits that although they have availed the cenvat credit on iron ore pellets, but the same were used in their factory and were cleared the same on payment of duty. Therefore, the payment of duty shall amount to reversal of cenvat

credit. In that circumstances, the appellants are not liable to reverse the cenvat credit. To support her contention, she relied on the decision of the Hon'ble High Court of Bombay in the case of Commissioner of Central Excise, Pune III Vs. Ajinkya Enterprises reported in 2013 (294) ELT 203 (Bom.). He also submits that the suppliers have paid the duty on the iron ore pellets received by the appellant. Therefore, the appellant is entitled to take cenvat credit of duty paid by the supplier as held by the Hon'ble Apex Court in the case of Commissioner of Central Excise & Customs Vs. MDS Switchgear Limited reported in 2008 (229) ELT 485 (SC).

4. On the other hand, the ld.A.R. for the Revenue supported the impugned order.

5. Heard both the parties and considered the submissions.

6. We find that in this case, although the appellant has taken cenvat credit on iron ore pellets, it has been held that the product of iron ore pellets is exempted from payment of duty and the said goods were used by the appellant for manufacturing process and the manufactured goods have been sold on payment of duty . Therefore, the demand of duty on such iron ore pellets shall be demanded reversal of cenvat credit as held by this Tribunal in the case of Ajinkya Enterprises Vs. Commissioner of Central Excise, Pune III reported in 2013 (288) ELT 247, which has been affirmed by the Hon'ble Bombay High Court as mentioned (supra), wherein the Hon'ble High Court of Bombay has held 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."*

7. Further, we take note of the fact that the supplier of the goods has paid the duty on iron ore pellets and the same has been accepted by the respondent, therefore, being a manufacturer of excisable goods, the appellant is entitled to cenvat credit of duty paid by the appellant and it has not been questioned to the supplier of the goods that the product is exempted from payment of duty and the Revenue has accepted the duty payment. In that circumstances, the appellant is entitled to take cenvat credit as held by the Hon'ble Supreme Court in the case of MDS Switchgear Limited (supra), wherein the Hon'ble Apex Court has held as under :

> *"**7.** The Tribunal has come to the conclusion that in fact there was no loss of revenue. It accepted the appeal by recording the following reasons :*

> *"Reasons given by the appellants for the alleged inflation of the value of the intermediate goods are logical. What was required of the Commissioner was to examine the quantum of the loading of the assessable value by the Modvat credit on the earlier inputs. That exercise has nowhere been done. If the department was of the opinion that the value of the final product was depressed, then they could have charged the Jalgaon unit with under-invoicing of their product. That has also not been done. The valuation as given by the Sinnar unit was duly approved by the department and the payment of duty was also duly accepted. We find absolutely no substance in the attempt of the learned Commissioner to convert a part of the duty so paid into 'deposit of duty'. There is no legal basis for such presumption. The rules entitled the receipt manufacturer to avail of the benefit of the duty paid by the supplier manufacturer. A quantum of duty already determined by the jurisdictional officers of the supplier unit cannot be contested or challenged by the officers in charge of recipient unit [2000 (38) RLT 179]."*

8. Therefore, we hold that the appellant has correctly taken the cenvat credit.

9. In view of this, the impugned order is not sustainable on the eyes of law and the same is set aside.

10. In the 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)

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