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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.70755 of 2013

(Arising out of Order-in-Original No.CCE/BBSR-I/09/2013 dated 22.03.2013 passed by Commissioner, Central Excise, Customs & Service Tax, Bhubaneswar-I.)

M/s. Balasore Alloys Limited
(At-Balgopalpur, P.O. Rasulpur, Dist. Balasore, Odisha.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bhubaneswar-I Commissionerate
.....Respondent
(C.R. Building, Rajaswa Vihar, Bhunaneswar-751007, Odisha.)

APPEARANCE

Shri Joidip Basu, Advocate for the Appellant (s)
Shri S.S.Chattopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER(TECHNICAL)

FINAL ORDER NO 77510/2023

DATE OF HEARING : 16 November 2023
DATE OF DECISION : 16 November 2023

Per : K. ANPAZHAKAN :

The present Appeal has been filed by M/s Balasore Alloys Limited ("the Appellant") against Order-in-Original dated 22.03.2013 passed by the Commissioner, Central Excise Customs & Service Tax, Bhubaneswar – I, confirming recovery of inadmissible Cenvat Credit of Rs.1,49,69,415/- availed on Input Services and Capital Goods for the period April 2010 to December 2011.

2. The facts of the case in brief are that the Appellant is a manufacturer of High Carbon Ferro Chrome ("HCFC") falling under Tariff Item 72024100 of the Central Excise Tariff Act, 1985, at its factory at Balgopalpur. The Appellant had been availing CENVAT credit on inputs, input services and capital goods and utilizing the same for

payment of excise duty on clearance of HCFC from its factory. For manufacture of HCFC, Chrome Ore is the principle raw material.

3. The Appellant also have a captive Chromite Mine in Kaliapani, Sukinda. Vide order dated 22.05.2000, the Appellant was granted the mining lease by the Government of Odisha (Department of Steel and Mines) subject to the condition that the mine shall be exclusively used for captive purpose to ensure steady supply of Chrome Ore to the Charge Chrome/Ferro Chrome Plant. Within the mining area, the Appellant also has a Chrome Ore Beneficiation Plant ("COB Plant") for upgrading low grade ores to high grade. The COB Plant is separately registered under the provisions of the Central Excise laws.

4. The high-grade Chrome Ores excavated from the mines are directly transferred to the factory for use in the manufacture of HCFC. However, the low-grade Chrome Ores are first transferred to the COB Plant and after its upgradation, it is transferred to the factory in entirety. The Appellant was discharging excise duty on removal of Ores from the COB plant to the factory through its Personal Ledger Account.

5. The Appellant had availed CENVAT Credit of input services received at the mines along with credit of capital goods installed at the COB Plant and no CENVAT Credit was availed by the COB plant at any stage. During the period in dispute, the Appellant was issued Show Cause Notices dated 23.03.2012 and 11.10.2012, alleging irregular availment of CENVAT Credit on input services viz. mining service, cargo handling service etc. and on capital goods installed at the COB plant. According to the department, since COB Plant was separately registered, CENVAT credit of input services is required to be availed proportionately between the factory and COB Plant based on Ores excavated and dispatched to factory and COB Plant respectively. With respect to capital goods, it was alleged that since the goods are not available for use in the factory of manufacturer of final product, credit would be inadmissible. In other words, CENVAT credit would be admissible in the hands of the COB Plant and not the factory, as both are separately registered under the Central Excise.

6. The Appellant filed detailed reply refuting the allegations in the notice and contending that services and capital goods used at the mines and COB plant are captive in nature and have direct nexus with the manufacturing process at the factory. The Appellant also relied upon several cases to support its contention.

7. The show-cause notices were confirmed by the Adjudicating Authority denying CENVAT Credit on the premise that factory and COB Plant are having separate registration numbers and one cannot take credit of another. Further, credit of input services and capital goods installed at the COB Plant for manufacture of the dutiable products is admissible only in the hands of COB Plant which is an independent entity and such credit cannot be availed by the factory, as per the CENVAT Credit Rules. Penalty of Rs.1,39,94,372/- was also imposed on the Appellant.

8. Aggrieved by the adjudication order passed by the Commissioner, Central Excise Customs & Service Tax, Bhubaneswar – I, the Appellant filed the present appeal before this Tribunal. The Ld. Counsel for the Appellant submits that this Tribunal has decided the same issue in favour of the Appellant in their own case for the earlier period vide Final Order No.75530/2023. Accordingly, he prayed for setting aside the impugned order and allowing their appeal.

9. The Ld. Authorized Representative appearing for the Revenue also accepted that this Tribunal has decided the same issue in favour of the Appellant in their own case for the earlier period vide Final Order No.75530/2023.

10. Heard both sides and perused the appeal records.

11. We observe that this Tribunal has decided the same issue in favour of the Appellant in their own case for the earlier period vide Final Order No.75530/2023, wherein it has been held as under:

> "22. We find that COB Plant is an integral part of the factory and it has no separate legal identity. We also observe that the invoices were issued in the name of the Appellant and credit was availed only once after payment of duty by the factory. Further,

the department has not disputed the nature of goods being capital goods, its use in manufacture of concentrated Ores which are ultimately used in manufacture of dutiable final products i.e. HCFC. Under these circumstances, we find no justification to disallow the credit on capital goods availed by the Appellant. We are of the view that the above decisions are squarely applicable to the present case and CENVAT credit on capital goods would be admissible in the hands of the factory.

23. In view of the above discussions and analysis, denial of CENVAT credit on input services and capital goods is not sustainable. Accordingly, the impugned order is set aside and Appeal filed by the Appellant is allowed with consequential relief, if any, as per law."

12. By following the ratio of the decision cited above in Appellant's own case, we hold that the demand confirmed in the impugned order is not sustainable. Since the demand itself is not sustainable, the question of charging interest and imposing penalty does not arise.

13. In view of the above discussion, we set aside the impugned order and allow the appeal filed by the Appellant.

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

Sd/-
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

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