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

REGIONAL BENCH – COURT NO. 2

Excise Appeal No. 70678 of 2013

(Arising out of Order-in-Original No. 17-21/MP/Denovo/Commr./2013 dated: 19.03.2013 passed by Commissioner of Central Excise & S.Tax. Ranchi.)

M/s. Steel Authority of India
(Administrative Building, Bokaro Steel City, Bokaro, Pin-837001.)

...Appellant

VERSUS

Commr. of CGST & CX, Ranchi
(CR. Building, 5A Main Raod, Ranchi-834001.)

...Respondent

APPERANCE :
Mr. Rahul Rangri & Mr. Shvit Betal, both Advocates for the Appellant
Mr. Sumit Mukhopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER No. 77675/2023

DATE OF HEARING : 01.12.2023
DATE OF DECISION : 01.12.2023

PER: K. ANPAZHAKAN :

The present appeal has been filed by the Appellant, M/s. Steel Authority of India, Bokaro, against the impugned Order-in-Original 17-21/MP/Denovo/Commr./2013 dated 20.03.2013, passed by Commissioner of Central Excise and ST, Ranchi, wherein he has confirmed the demand of Rs.25,37,432/- along with interest. No penalty was imposed under Rule 25 or 27 of the Central Excise Rules, 2002. The duty along with interest confirmed has been adjusted against the pre deposit of Rs.35,00,000/- made by the Appellant. Aggrieved against the impugned order, the Appellant has filed this appeal.

2. Briefly stated facts of the case are that during the period in dispute, the Appellant produced acetylene gas which was used in various departments of the Appellant in relation to the manufacture of final products and also for the repair and maintenance of various plant and machineries. Such acetylene gas being used in the factory for these

activities was being cleared without payment of duty by availing the benefit of exemption Notification no. 65/95-CE and 67/95-CE (hereinafter collectively referred to as "exemption notifications").

3. Notification no. 65/95-CE provides for exemption to goods manufactured in a factory workshop and used for the maintenance of machinery installed in the factory. Whereas Notification no. 67/95-CE provides exemption for capital goods and inputs captively consumed within the factory of production. In respect of the aforementioned clearance of the acetylene gas availing the benefit of the above said exemption notifications, the Appellant was issued various SCNs seeking to deny benefit of the notifications on the following grounds:

- As regards Notification No. 67/95-CE dated 16.03.1995 – since it is not directly used in the manufacture of dutiable goods. The Appellant used the gas to manufacture another exempt intermediate product which was further used in manufacture of dutiable product.
- As regards Notification No. 65/95-CE dated 16.03.1995- Use of acetylene gas for cutting and welding purposes in the repair and maintenance works through intermediate products and not directly.

4. On the basis of these allegations, an amount of Rs. 1,41,58,924/- was demanded on the acetylene gas consumed captively in the factory during the underlying period. The Commissioner of Central Excise, Ranchi passed a common Order-in-Original No. 86-90/MP/Commr/2005 dated 27.07.2005 confirming the duty demanded in the SCNs along with interest and penalty . On appeal, the Tribunal, Kolkata vide Final Order No. A-145/KOL/2011 dated 03.05.2011 remanded the matter back to the Adjudicating Authority to decide the matter by taking into consideration the Circulars of CBIC dated 31.05.1990, 06.12.1993, and 04.05.1994. Pursuant to the order of the CESTAT, the Commissioner of Central Excise and Service Tax, Ranchi passed the impugned Order, dropping the demand with respect to the exemption claimed by the Appellant under Notification No. 67/95-CE. However, the demand of Rs. 2,29,298/-on the acetylene gas used in the traffic department for repair and maintenance of railway track, wagons etc., and Rs. 23,08,134/- for

the acetylene gas used in 26 shops/departments wherein the Appellant had claimed exemption under Notification No. 65/95-CE was confirmed. Such demand was confirmed denying the benefit of Notification no. 65/95-CE on the following two grounds:

- The acetylene gas has not been manufactured in the workshop; and
- The benefit of notification is only available for the machineries that are installed in the factory and the expression 'machinery installed in the factory' conveys the meaning that the machinery should be used for the manufacture of final goods. Since the acetylene gas has been used for repair and maintenance of machineries that are not used for the manufacture of final goods, the exemption will not be applicable.

5. In their grounds of appeal, the Appellant submits that the benefit of Notification No. 65/1995-CE has been denied merely on the ground that the acetylene gas is not used in the repair and maintenance of machinery directly, rather the same is being used via intermediate products. With regard to the observation of the Ld. Commissioner that the acetylene gas is not manufactured in the workshop of the Appellant, they submit that it is factually incorrect as well as beyond the allegation made in the underlying SCNs. There is no allegation in the Notices to the effect that the acetylene gas was not manufactured in the workshop of the Appellant. The only allegation is that the same is not directly used in the repair and maintenance of machineries. The Ld. Commissioner travelled beyond the scope of the SCNs to deny the benefit of exemption availed by the Appellant under Notification No. 65/95-CE. Therefore, the impugned Order is liable to be set aside on this ground alone. In this regard, the Appellant placed their reliance on the decision of the Hon'ble Apex Court in the case of **Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd., 2007 (215) E.L.T. 489 (S.C.)**

6. The Ld. Commissioner has denied the benefit of exemption under Notification No. 65/95-CE dated 16.03.1995 for the acetylene gas used in the traffic department for repair and maintenance of rail tracks, railway wagon and loco on the ground that benefit of exemption notification no. 65/95-CE dated 16.03.1995 is not eligible as the use of acetylene gas for such activity cannot be said to be used for repair and maintenance of machinery installed in the factory. It has been held that the railway track, railway wagon, loco, and vehicles of operation garage are not machineries installed in the factory. Further, it has been held that the expression 'machinery installed in the factory' implies that the machinery should be used for manufacture of goods. In this regard, the Appellant submits that in order to cater to the requirements of production, internal transportation of various goods are to be carried out through an internal network of railway lines, locomotives, and wagons. All the dispatches of dutiable iron and steel products are also made through railways for which the entire network of railway lines inside the premises of the Appellant is owned and maintained by the Appellant. Thus, the railway network is an integral part of the plant without which the production and dispatches of dutiable products would not be possible. The plant is handling 900 to 1000 railway wagons every day to meet the requirements of incoming raw materials and product dispatches. In relation to dispatch of 1 ton of steel, approximately 8 tons of handling of material is done by them. The slag arising in the blast furnace and steel melting shop are also transported through rail within their factory. The controlling and monitoring of rail traffic is essential for properly feeding the inputs to the manufacturing process and transfer of intermediate products to the next process. The inability to transport the inputs and intermediate products in the absence of rail traffic will cause stoppage of production and can also result in damage of the plant and machinery. The Appellant submits that they claimed the exemption of captively consumed acetylene gas under the Notification 65/95 as well as under 67/95. The adjudicating authority has denied the exemption for the acetylene gas consumed within the factory for repair and maintenance of railway track, railway wagon, loco and in certain shops and departments for repair and maintenance of machineries under the Notification 65/95. However, they are eligible for the exemption under the Notification 67/95, since the said railway track, rail wagons, and locomotives are integral to the manufacture of the goods of the Appellant and are therefore they can be considered as machineries installed in the factory for the manufacture of the goods. Accordingly, the Appellant prayed that they are eligible for benefit of exemption Notification no. 67/95-CE. The issue of whether railway tracks used in the plant form a part of manufacture is no longer res-integra since the Hon'ble Supreme Court in the case of **Jayaswal Neco Limited v. Commissioner of Central Excise, Raipur – 2015 (319) E.L.T. 249 (S.C.)** held that the use of railway tracks are meant for production of goods. Accordingly, they prayed for setting aside the demand and allowing their appeal.

7. The Ld. D.R. reiterated the findings of the adjudicating authority in the impugned order.

8. Heard both sides and perused the appeal documents,

9. We observe that the issue to be decided in the present appeal is whether exemption under Notification No. 65/95-CE or 67/95-CE is applicable to Acetylene Gas captively consumed within the factory for repair and maintenance of railway track, railway wagon, loco and in certain shops and departments for repair and maintenance of machineries We find that in the impugned order the adjudicating authority has denied the benefit of Notification no. 65/95-CE on the following two grounds:

- The acetylene gas has not been manufactured in the workshop; and
- The benefit of notification is only available for the machineries that are installed in the factory and the expression 'machinery installed in the factory' conveys the meaning that the machinery should be used for the manufacture of final goods. Since the acetylene gas has been used for repair and maintenance of machineries that are not used for the manufacture of final goods, the exemption will not be applicable.

10. We observe that the Appellant claimed the exemption of captively consumed acetylene gas under the Notification 65/95 as well as under 67/95. The adjudicating authority has denied the exemption for the acetylene gas consumed within the factory for repair and maintenance of railway track, railway wagon, loco and in certain shops and departments for repair and maintenance of machineries under the Notification 65/95. However, we observe that they are eligible for the exemption under the notification 67/95, since the said railway track, rail wagons, and locomotives are integral to the manufacture of the goods. We also observe that the controlling and monitoring of rail traffic is

essential for properly feeding the inputs to the manufacturing process and transfer of intermediate products to the next process. The inability to transport the inputs and intermediate products in the absence of rail traffic will cause stoppage of production and can also result in damage of the plant and machinery. Hence, we hold that the said railway track, rail wagons, and locomotives are integral to the manufacture of the goods of the Appellant and are therefore they can be considered as machineries installed in the factory for the manufacture of the goods. We observe that <u>Notification 67/95 exempts from payment of duty all goods specified therein manufactured in a factory and used within the factory of production in or in relation to manufacture of final products.</u> The scope of this notification is wide enough to cover the acetylene gas manufactured by the Appellant and used in the traffic department for repair and maintenance of railway track, wagons etc., and the acetylene gas used in 26 shops/departments for repair and maintenance of machineries. The issue of whether railway tracks used in the plant form a part of manufacture is no longer res-integra since the Hon'ble Supreme Court in the case of **Jayaswal Neco Limited v. Commissioner of Central Excise, Raipur – 2015 (319) E.L.T. 249 (S.C.)** held as under:

> *"17. …. It is clear that the railway tracks are installed not only within the plant, but the main objective and purpose for which the capital expenditure on laying these railway tracks is incurred by the appellant is for transporting hot metal in ladle placed on ladle car from blast furnace to pig casting machine through ladle car where hot metal is poured into pig casting machine for manufacture of pig iron.* ***<u>It is clear from the above that the use of railway tracks inside the plant not only form the process of manufacturing, but it is inseparable and integral part of the said process inasmuch as without the aforesaid activity for which railway tracks are used, there cannot be manufacturing of pig iron</u>****."*

11. By following the ratio of the decision cited above, we hold that the use of railway tracks are meant for production of goods. The acetylene gas used in 26 shops/departments for repair and maintenance of machineries was also used in connection with the manufacture of the finished goods for

the Appellant. Accordingly, we hold that the Appellant is eligible for the benefit of exemption notification no. 67/95-CE. Hence, the demand confirmed in the impugned order by denying the benefit of exemption notifications 65/95 or 67/95 is not sustainable and accordingly, we set aside the same.

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

(Dictated and pronounced in the open court)

(R. Muralidhar)
Member (Judicial)

(K. Anpazhakan)
Member (Technical)

Piniki.