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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.509 of 2012

(Arising out of Order-in-Original No.38/Commissioner/CE/Haldia/Adjn/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

M/s. GEE Limited
(Jalan Industrial Park, P.S. Sankrail, Howrah-711302.)

...Appellant

VERSUS

Commissioner of Central Excise, Haldia

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

WITH

Excise Appeal No.510 of 2012

(Arising out of Order-in-Original No.38/Commissioner/CE/Haldia/Adjn/2012 dated 30.03.2012 passed by Commissioner of Central Excise, Haldia Commissionerate, Kolkata.)

Shri Govind Kumar Saraf
(Jalan Industrial Park, P.S. Sankrail, Howrah-711302.)

...Appellant

VERSUS

Commissioner of Central Excise, Haldia

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700001.)

APPEARANCE

S/Shri J.P.Khaitan, Sr. Advocate AND Sanjay Bhowmik, Ganesh N. Jajodia & Ms.Nitu Singh, all Advocates for the Appellant (s)

Shri S.Mukhopadhyay, Authorized Representative for the Revenue

CORAM: HON'BLE SHRI R. MURALIDHAR, MEMBER(JUDICIAL)
HON'BLE SHRI RAJEEV TANDON, MEMBER(TECHNICAL)

FINAL ORDER NO. 75293-75294/2024

DATE OF HEARING : 20 February 2024
DATE OF DECISION : 20 February 2024

Per : R. MURALIDHAR :

The Appellants are importing copper coated wires and they were carrying out processes like cutting, rewinding, branding, testing and repacking on the same. They were availing Cenvat Credit. They were also procuring their inputs from the domestic market. For all such procurements, they were availing the Cenvat Credit. For the finished goods cleared by them they were paying the excise duty. The Department issued Show Cause Notice on the ground that the activities undertaken by them does not amount to manufacture in terms of Section 2(f) of the Central Excise Act, 1944. After due process, the demands were confirmed along with interest and penalties. Being aggrieved, the appellant is before us.

2. The Ld. Counsel appearing on behalf of the Appellants submits that the Appellants were paying excise duty while the finished goods were cleared after undertaking all the activities like cutting, rewinding, branding, testing and repacking etc.. The Department did not question the assessments filed under ER-1 Returns and accepted the Excise Duty paid by them. Therefore, he submits that the department is precluded from taking the stand that the appellants are not eligible to avail the Cenvat Credit on the ground that they are not undertaking any manufacturing activities. He relies on the case of GEE Ltd. v Commissioner of Central Excise, Thane-I decided vide Final Order No.A/85952-85953/2022 dated 11.10.2022 in respect of their own Maharashtra unit. He also relies on the case law of Mumbai High Court in the case of Commissioner of Central Excise, Pune-III v. Ajinkya Enterprises [2013 (294) E.L.T. 203 (Bom.)]. Further, he relies on the Final Order No.76733 of 2023 dated 15.09.2023 in the case of Nilachal Iron & Power Limited vs. Commissioner of CGST & Excise, Jamshedpur. He submits that all these cases it has been consistently held that if the Department does not have any qualm to accept the Excise duty on the finished goods, the Appellant cannot be denied Cenvat Credit for the

inputs used by them on the ground that manufacture has not taken place in terms of Section 2(f) of the Central Excise Act, 1944.

3. The Ld.AR for the Department reiterates the findings of the lower authorities.

4. Heard both sides and perused the appeal papers and cited case law.

5. We find that the issue is no more *res integra*. The Mumbai Tribunal vide Final Order No.A/85952-85953/2022 dated 11.10.2022 in the appellant's own case has followed the judgement of Hon'ble Bombay High Court in the case of Commissioner of Central Excise, Pune-III vs. Ajinkya Enterprises and has held as under:-

> *"4.3 <u>In our view, the issue is squarely covered by the decision in the case of Ajinkya Enterprises referred to by the counsel for the appellant wherein the following has been held</u>:-*
>
> > ***"8.*** *We see no merit in the above contentions. As rightly contended by the representative of the assessee appearing in person, till 1st March, 2005 <u>the Revenue has accepted that the activity carried on by the assessee constituted manufacturing activity in view of Board Circular dated 7th September, 2001 and accordingly held that the assessee is entitled to take credit of duty paid on HR/CR coils.</u> It is only because, the Board, on 2nd March, 2005 has withdrawn the Circular dated 7th September, 2001 the Revenue is claiming that the activity carried on by the assessee does not amount to manufacturing activity. <u>The question is, whether on the facts of the present case, the Revenue, based on the Circular dated 2nd March, 2005, is justified in calling upon the assessee to reverse the credit or pay the amount to the extent of the credit liable to be reversed, with interest and penalty</u>?*
> >
> > ***9.*** *It is relevant to note that the Board in its Circular dated 7th September, 2001 had only held that the activity of cutting/slitting of HR/CR coils into sheets or strips constitutes manufacture. <u>Admittedly, the assessee had carried on additional activities such as pickling and oiling on the decoiled HR/CR coils,</u>*

which is a complex technical process involving huge investment in plant and machinery. Since these additional activities were not considered by the Board in its Circular dated 7th September, 2001, the withdrawal of the said Circular cannot be a ground to hold that the activity carried on by the assessee did not constitute manufacturing activity. It is only on 24th June, 2010, the Board has issued a Circular to the effect that the process of pickling does not amount to manufacture. Therefore, during the relevant period, that is, during the period from 2nd March, 2005 to 31st December, 2005, it could not be said that the issue was settled and that the assessee paid duty on decoiled HR/CR coils knowing fully well that the same were not manufactured goods. If duty on decoiled HR/CR coils was paid bona fide, then availing credit of duty paid on HR/CR coils cannot be faulted.

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.*

11. *Therefore, in the facts of the present case, in our opinion, no fault can be found with the decision of the CESTAT in passing the impugned order."*

> *4.4 Accordingly in view of the decision of the jurisdictional High Court on the subject, we follow the same. <u>Accordingly the demand made seeking to recover the Cenvat credit from the appellants which is in respect of the processed goods actually cleared by them on payment of central excise duty has to be set aside</u>."*
>
> *[Emphasis supplied]*

6. Respectfully following this decision, we allow the present Appeals with consequential relief to the Appellants, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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