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

REGIONAL BENCH – COURT NO. 1

**Excise Appeal No. 910 of 2011**

(Arising out of Order-in-Original No.56/Commr/BOL/11 dated 20.07.2011 passed by Commissioner of Central Excise, Bolpur Commissionerate, Nanoor Chandidas Road, Sian, Bolpur, Birbhum-731204.)

**M/s. East India Holding Pvt. Ltd.** **: Appellant**
(Room No. 501, Swaika Centre, 4A, Pollock Street, Kolkata-700 001.)

**VERSUS**

**Commissioner of C.E., Bolpur Commissionerate** **: Respondent**
(Nanoor Chandidas Road, Sian, Bolpur, Birbhum-731204)

**APPEARANCE**:

Shri S. Mukhopadhyay, Authorized Representative for the Appellant

Shri Ajay Sanwaria, Advocate for the Respondent

**CORAM**:

**HON'BLE SHRIASHOK JINDAL, MEMBER (JUDICIAL)**
**HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)**

**FINAL ORDER NO. 75662/ 2024**

DATE OF HEARING :22.03.2024

**Order : [Per Shri Ashok Jindal]**

The appellant is in appeal against the impugned order wherein the CENVAT credit has been denied on structural items viz. M.S. Angle, M.S.Channel, Plates, Joists, HR Coil, M.S. Round, 'TMT' I 'TMT Bar', 'P.F. Beam', 'Chequered Coil', 'Rod' etc. falling under Chapter 72 of the Central Excise Tariff Act, 1985 for the period 2006-07 to 2009-10. on the ground that the same are not 'inputs' or 'capital goods' for manufacture of final products. The period of dispute is from 2006-07 to 2009-10 whereas the Show Cause Notice came to be issued on 18.01.2011 by invoking the extended period of limitation.

2. None appeared on behalf of the appellant nor has any request for adjournment been received.

3. On perusal of the record, we find that in this case, the Show Cause Notice has been issued to the appellant by invoking the extended period of limitation and during the impugned period, there was a dispute going on whether the assessee is entitled to avail CENVAT Credit on the items namely, MS Channel, Billets, etc. during the impugned period or not. The said issue has been settled by the Hon'ble Chattisgarh High Court in the case of *Vandana Global Ltd v. Commissioner of c. Ex. & Cus., Raipur [2018 (16) G.S.T.L. 462 (Chatt.)]* wherein the Hon'ble High Court 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 :*
>
> *"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."*
>
> ***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.*
>
> ***10.*** *In the result, the appeals of the assessees are allowed setting aside the Tribunal's decision impugned in each of those appeals. The appeals filed by the Revenue are dismissed. However, no order as to costs."*

4. Therefore, we hold that the extended of limitation is not invokable in the facts and circumstances of this case. Accordingly, we hold that the whole of the demand is barred by limitation, the impugned order is set aside and the appeal is allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

**(K. ANPAZHAKAN)**
MEMBER (TECHNICAL)

**(ASHOK JINDAL)**
MEMBER (JUDICIAL)

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