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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 3 of 2011

(Arising out of Order-in-Original/CCE/Shillong No. 06/2010 dated 27.09.2010 passed by the Commissioner of Central Excise, Morellow Compound, M.G. Road, Shillong – 793 001)

M/s. Greystone Ispat Limited **: Appellant**
EPIP Industrial Area, Umtru Road,
Byrnihat, Ri-Bhoi District,
Meghalaya, PIN – 793 101

VERSUS

Commissioner of Central Excise **: Respondent**
Morellow Compound, M.G. Road,
Shillong – 793 001

AND

Excise Appeal No. 4 of 2011

(Arising out of Order-in-Original/CCE/Shillong No. 06/2010 dated 27.09.2010 passed by the Commissioner of Central Excise, Morellow Compound, M.G. Road, Shillong – 793 001)

Shri Hemant Jain, Director **: Appellant**
M/s. Greystone Ispat Limited
EPIP Industrial Area, Umtru Road,
Byrnihat, Ri-Bhoi District,
Meghalaya, PIN – 793 101

VERSUS

Commissioner of Central Excise **: Respondent**
Morellow Compound, M.G. Road,
Shillong – 793 001

APPEARANCE:

Shri Devaraj Sahu, Advocate for the Appellant(s)

Shri B.K. Singh, Authorized Representative for the Respondent

CORAM:

HON’BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON’BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76157-76158 / 2024

DATE OF HEARING / DECISION: 24.06.2024

ORDER: [PER SHRI ASHOK JINDAL]

The appellants are in appeal against the impugned order wherein CENVAT Credit has been denied and consequently, penalty on both the appellants has been imposed.

2. The facts of the case are that the appellant-company is a manufacturer of TMT Bars and Rods, HSD Bars and Rods, etc., located in the State of Meghalaya and availing the benefit of exemption Notification No. 32/99-C.E. dated 08th July, 1999. In terms of the said Notification, a manufacturer of excisable goods is required to utilize CENVAT Credit lying in their CENVAT Credit account and if they opt to pay duty in cash, it shall be refundable after completion of the month. In these set of facts, the appellant procured certain inputs during the period 2004-05, 2005-06 and 2006-07 and availed CENVAT Credit thereon.

2.1. An investigation was conducted by the Directorate General of Central Excise Intelligence (DGCEI), which revealed that the supplier of inputs i.e., M.S. Ingots, which is their prime raw material for manufacturing their final products, were not received in the factory of the appellant and that only invoices had been issued. For alleging that, the basis of the Revenue is that the supplier of the goods has stated that they had supplied the goods at the factory gate and issued invoices but the goods had not reached the factory premises of the appellant; the vehicle numbers entered in the invoices are not capable of transporting the said goods from the supplier to the appellant's factory, being two-wheelers, three-wheelers, tractors, etc. It is also alleged by the Revenue that the transporter of the goods had denied transporting the goods to the factory premises of the appellant.

3. In these set of facts, a Show Cause Notice was issued to the appellants, to deny the CENVAT Credit and to impose penalty on both the appellants.

4. The matter was adjudicated and thereafter, CENVAT Credit was denied and penalty was imposed on both the appellants vide the impugned order.

5. Aggrieved from the said order, the appellants are before us.

6. The Ld. Counsel appearing on behalf of the appellants submits that they had procured the inputs from the supplier of the goods, which is evident from the fact that during the investigation the supplier had stated that they had delivered the goods at their factory gate in the vehicle which was sent by the appellant for transportation of the goods. It is further submitted that all the payments were made by way of account payee cheques.

6.1. It is also submitted that all these inputs have been used for the manufacture of their final products which have ultimately suffered duty. In these circumstances also, he submits that if the appellant has not used the inputs but paid duty thereon, the payment of duty could be termed as reversal of CENVAT Credit.

6.2. The Ld. Counsel for the appellants further submitted that as the appellant is operating under Notification No. 32/99-C.E. *ibid*. wherein the appellant is required to utilize CENVAT Credit first and then, if they opt to pay duty in cash, the duty so paid in cash is refundable to the appellant; if the appellant has not procured goods from these suppliers, in such circumstances the appellant has to pay more duty and is entitled to take more refund. It is therefore submitted that in these circumstances, it cannot be alleged against the appellant that they had not procured the said goods.

7. On the other hand, the Ld. Authorized Representative appearing for the Revenue opposed the contention of the Ld. Counsel for the appellants. He submits that it is a fact that the suppliers have issued invoices at their premises and sold the goods, but they never reached the factory premises of the appellant, as the transporters have denied transportation of the said goods to the appellant's factory. Moreover, he argued that the vehicle numbers mentioned in the invoices were not capable of transporting the said goods. Further, that the check-post reports also show that the said vehicles had not passed out from these check-posts. It is contended that in these circumstances, the appellant are not entitled to take CENVAT Credit on these invoices, which are merely invoices received by the appellant and not the goods.

8. Heard the parties.

9. We find that in this case, the issue before us, when invoices are issued by the supplier who has stated that they have sold the goods at the factory gate, is: for inputs received at their factory, which are not used in the manufacture of their final products as alleged by the Department, whether the appellant are entitled to take CENVAT Credit or not.

10. We find that in this case, there is no evidence brought on record by the Revenue to show that if these inputs were not used for the manufacture of final products, then from where the appellant

procured inputs for manufacturing the final products, which have suffered duty.

10.1. Moreover, the supplier was not made a party to the Show Cause Notice, to impose penalty under Rule 26 of the Central Excise Rules, 2002 for the alleged involvement in issuing fake invoices to the appellant.

10.2. Further, if the appellant has not procured the inputs, they are entitled to avail CENVAT Credit on these invoices. In these circumstances, they have to pay more duty and are entitled to take more refund.

10.3. We also take note of the fact that during the impugned period, CERA Audit took place and no objection was raised on the appellant.

11. In view of the above, we hold that the CENVAT Credit cannot be denied to the appellant without any corroborative evidence being brought on record by the Revenue. Therefore, we do not find any merit in the impugned order and accordingly, the same is set aside. No penalty is imposable on the appellants.

12. In the result, the appeals are allowed with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

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

Sdd