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

REGIONAL BENCH – COURT NO.2

Excise Appeal Nos. 75415-75417 of 2015

(Arising out of Order-in-Appeal No. 03/Commr/Bol/15 dated 07.01.2015 passed by Commissioner of Central Excise & Service Tax, Bolpur.)

M/s Shyam Ferro Alloys Ltd.,
(Palitpur Road Village-Dewandighi, Dist.-Bardhaman, West Bengal, Pin-713102.)
Shri R.P. Dwivedi,
(Authorized Signatory of M/s Shyam Ferro Alloys Ltd.,
M/s Himanshu Goel,
Director of M/s Shyam Ferro Alloys Ltd.,

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Bolpur,
(Nanoor, Chandidas Road, Sian Bolpour, Dist.-Birbhum, West Bengal.)

.. ...**Respondent**

APPERANCE :
Shri N. K. Chowdhury, Advocate for the Appellant
Shri K. Chowdhury, Authorized Representative for the Respondent

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

Final Order No...76465-76467/2024

DATE OF HEARING : 15.07.2024
DATE OF DECISION : 15.07.2024

R. Muralidhar :

The appellant is in appeal against the impugned order wherein the appellant is directed to reverse the Cenvat credit availed on Electrode Carbon Paste.

2. The appellant manufacture ferro alloys. They use amongst other items "Electrode Carbon Paste" in the furnace to facilitate the manufacture of the finished goods. Electrode Carbon Paste is used inside the furnace and it is their contention that the same is in the nature of consumable and gets consumed during the course of the manufacturing process. They submit that Electrode Carbon Paste is also contained in

the finished goods, i.e. ferro alloys and therefore, it is rightly considered to be an input in terms of Rule 2 (k) of the Cenvat Credit Rules, 2004.

3. On the other hand, it is the Revenue's contention that the subject goods are in the nature of capital goods in terms of Rule 2(a) of the Cenvat Credit Rules, 2004 and accordingly, Cenvat credit on them ought to have been availed by the appellants as prescribed for capital goods, that is limiting it to two slots of 50% in each of the two financial years. A demand has been raised against the appellant for the period December 2008-2013 by issuance of a show cause notice dated 22.05.2013 by invoking extended period of limitation. The adjudicating authority confirmed the demand. Against the said order, the appellant is in appeal.

4. The appellant submitted that on identical issue this Tribunal vide Final Order No.75250/2023 dated 18.04.2023 dealt the issue and allowed Cenvat credit to the appellant. Therefore, it is prayed that the issue is no more res integra and accordingly the impugned order is to be set aside.

5. Heard the parties, considered the submissions.

6. We find that in that case, this Tribunal in the Final Order No. 75250/2023 dated 18.4.2023, has held as under:-

> *"6. I find that the issue is no more res integra and has been long settled by slew of decisions passed by various authorities. The fact of use of the said goods and its ultimate consumption in the manufacture of finished goods is not disputed. The electrode carbon paste (ECP) owing to its capability to conduct electricity is essential for the manufacture of the ferro alloys and in the process gets consumed, even being a part of the finished goods. Therefore, it is certainly in the nature of a consumable.*
> *6.1 The Tribunal in the case of Commissioner of Central Excise, Bhavnagar Vs. Unifrax India Ltd. reported in 2009 (245) ELT 474 (Tri.-*

Ahmd.) taking noted of its earlier decision and thereby allowed CENVAT Credit on electrode assembly and needles. It held as:

> *"2……."In Monnet Ispat Ltd. v. C.C.E., Raipur reported in 2002 (148) E.L.T. 1202 (Tri.-Del) it was held that the consumable items used in the induction furnace for the manufacture of ingots are inputs. Similarly it was held in Punjab General Manufacturing Works v. C.C.E, Kanpur reported in 2002 (147) E.L.T. 331 (Tri.-Del) that crucibles used for molten metals at high temperatures are consumables and have to be treated as inputs. The items used by the appellants are also of the same category and therefore I do not find any merit in the appeal filed by the Revenue and accordingly reject the same." (Emphasis Supplied)*

7. The Hon'ble Calcutta High Court in the case of Singh Alloys and Steel Ltd. Vs. Asstt. Collector : 1993 (66) ELT 594 (Cal.) had held that the definition of input was not dependent upon what ought to be used but what is in fact used. Relying on this decision the Tribunal in the case of Industrial Chemicals & Monomers Ltd., Vs. CCE, Madurai had held that carbon paste used in the manufacture of calcium carbide either as a technical necessity or otherwise was entitled to benefit of notification 201/79-CE dated 4.6.79, thereby rejecting the plea of mere incidental consumption of carbon paste in the course of manufacture.

8. It is further observed that this very aspect is also covered by the decision of this Tribunal in the case of Commissioner of Central Excise & Service Tax, Bolpur Vs. Maithon Alloys Ltd. vide Final Order No.FO/A/76164/2016 dated 16.11.2016.

9. Applying the ratio of the aforesaid judicial pronouncement to the facts herein, there is no question of denying that electrode carbon paste is in the nature of a consumable as it gets consumed during the process of manufacture of ferro alloys. The electrode carbon paste, therefore, cannot be held to be capital goods in terms of Rule 2 (a) of the Cenvat Credit Rules, 2004.

10. The decision of the Tribunal in the case of Silical Metallurgic Limited Vs. Commissioner of Central Excise, Cochin reported in 2002 (149) ELT 711 (Tri.-Bang.), is on a totally different sphere of consideration and not applicable to the present case at hand.

11. I am of the opinion that electrode carbon paste used and consumed in the process of manufacture of ferro alloys is an input eligible for cenvat credit under Rule 2 (k) of the Cenvat Credit Rules, 2004. I, *therefore, find no infirmity in the appellant having availed credit on the said product as input. Accordingly, the demand of interest cannot be sustained.*

12. The impugned order of the ld. Commissioner (Appeals) is set aside and the appeal is allowed with consequential relief, if any."

7. As the issue has already been settled in favour of the appellant, we hold that the appellant has correctly taken Cenvat credit on Electrode Carbon Paste, which gets consumed during the course of manufacturing process.

8. Therefore, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Dictated and pronounced in the open court)

Sd/-

(R. Muralidhar)
Member (Judicial)

Sd/-
(Rajeev Tandon)
Member (Technical)

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