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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.100 of 2011

(Arising out of Order-in-Original No.22/COMMR./CE/KOL-II/Adjn/2010-11 dated 31.12.2010 passed by Commissioner of Central Excise, Kolkata-II.)

M/s. Mangal Steel Enterprises Ltd.
(15/1, "F" Road, Belgachia, Howrah.)

...Appellant

VERSUS

Commissioner of Central Excise, Kolkata-II

.....Respondent

(15/1, Strand Road, Custom House, M.S. Building, Kolkata-700072.)

APPEARANCE

Shri S.P.Siddhanta, Consultant for the Appellant (s)
Shri K.Chowdhury, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76798/2024

DATE OF HEARING : 07.08.2024
DATE OF DECISION : 07.08.2024

Per : RAJEEV TANDON :

The present appeal has been filed by M/s. Mangal Steel Enterprises Limited, assailing the Order-in-Original No.22/COMMR./CE/KOL–II/ADJN/2010–11 dated 31.12.2010, whereby the learned Commissioner disallowed the Cenvat credit of Rs.90,40,712/- and directed its recovery in terms of rule 14 of Cenvat Credit Rules, 2004[1] read with section 11 A(2) of the Central Excise Act,

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1 The Rules

1944[2]. The order also demands interest under section 11AB on the said amount, besides imposing a penalty of equal amount on the assessee, in terms of rule 15(2) of the Rules[1], read with section 11 AC of the Act[2].

2. The appellant is engaged in the manufacture of dutiable excisable goods i.e. HDG TENSION BAR, Galvanized Mild Steel, Threaded Rod etc. falling under heading 7308/7318 of the Central Excise Tarriff Act, 1985[3]. The appellant has two units - Unit I and Unit II and both of them deal with excisable goods for export purposes. During the period September 2004 to April 2008, the appellant sent some consignments of import in original condition meant for the Unit I to the Unit II for use in the manufacture of excisable goods as export orders for Unit I were not enough, and some machineries for production of tailor made items were also not available with Unit I. The appellant obtained receipt of the delivery of the said inputs from Unit II and receipt and use of the said inputs in Unit-II were duly recorded in the Cenvat records and so indicated in the returns submitted to the Range Superintendent. The appellant thus claims that the facts of the case were within the knowledge of the department, and no suppression or intent to evade payment of duty can be alleged/meted out in the matter. They also submit that they paid Service Tax on GTA service on such consignments wherever applicable. During the course of audit in 2008, it was pointed out that the availment of credit on the strength of documents addressed to Unit I and credit taken and

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2 The Act
3 The Tariff Act

utilised in Unit II was invalid, as appropriate duty paying documents without cover of a proper receipt (said to be received in Unit II), the goods were supposedly not utilized in the manufacture of excisable goods, and therefore, the appellant had contravened the provisions of rule 3(1) and rule 4(1) of the Cenvat Credit Rules[1] read with rule 9(2) and 2(K) of the rules ibid. The appellant also interalia states that before arriving at such a decision, the revenue authorities, neither did any stock verification, nor were they able to adduce any evidence suggesting disposal of such inputs elsewhere to make out a case of willful suppression of facts with intent to evade payment of duty as alleged in the impugned show cause notice.

3. The appellant has appended alongwith the appeal copies of documents showing various inputs under specified duty paying documents (invoices and bill of entry) issued in the name and address of Unit No.I and H.O. at 248, G.T. Road, SALKIA, Howrah-711106, that were received and duly recorded in Cenvat Credit Account and used in the manufacture of various finished products by Unit II. As the inputs were not required for Unit No.I the same were delivered to their Unit No.II. It is pointed out that during the material period there was no normal work in Unit No.I, as there were no sufficient orders for execution in the name of Unit No.I. Further all the purchase orders for inputs etc., required for both Unit No.I & II are issued from the head office wherefrom Unit No.I is also functioning. All the particulars of receipts and issues of inputs and cenvat credit taken and utilized are duly recorded in cenvat credit registers maintained by Unit No.II, copy

of which are regularly submitted to the concerned Range Superintendent at the time of submission of monthly returns from time to time. They state that their business is only for exports and there is no home consumption of goods, excepting a few sales of unusable scrap in the local market, frequent visits of Central Excise Range staff are required for export supervision. They state that in this case they acted on bonafide belief that proper cenvat formalities had been observed and there was no willful suppression of facts. The particulars of receipts of inputs from time to time were duly reflected in statutory records as well as mentioned in statutory reports and returns, and therefore extended period of five years is not applicable for any omission on part of assessee, unless it is proved to be a deliberate attempt by the assessee to avail irregular cenvat credit with intent to evade payment of duty.

4. We have heard the ld.AR Shri K.Chowdhury for the Revenue, who supports the order of the ld.Commissioner and reiterates the findings.

5. We note that the appellant have enclosed as part of the appeal paper book, copies of the said invoices and bills of entry on which credit is availed, wherein on the reverse of which acknowledgement of receipt and consumption of the said goods at the end of the Unit II is duly recorded. The appellant submits that the lower authorities, overlooked this evidence that was supplied at the time of the hearing.

6. The Board vide Circular No.179/13/96-CX dated 29.02.1996 and Circular No.180/14/96-CE dated 07.03.1996 has clarified that credit is

available if entire consignment is received in the Unit concerned in original condition. It is noted that while the invoices etc. have been duly endorsed in favour of Unit II, the appellant may not have so done in strict adherence of the procedure prescribed vide the said two circulars. Nonetheless, it is noted that the appellant had duly brought the factual position to the notice of the department while filing their periodical returns, as well as at the time of sanction of rebate by the maritime authorities. Thus, in the context the lapses are no more but procedural condonable lapses. In **CCE, Salem v. Chemplast Sanmer Ltd.**[4] where the invoice was in the name of Plant No.II & III while inputs were received and utilized in Plant No.I of the assessee, it was held that Cenvat credit can be availed in Plant No.I so long as there was no dispute about the receipt and utilization of the said material in the manufacture of finished goods. Similar ratio of law flows from the decision of the Tribunal in the case of **Larsen & Toubro Ltd. v. Collector**[5]**.** In the present case too the situation has been the same, the inputs were actually received in Unit I, and used in Unit II, which were duly recorded in the registers showing receipts and uses and also reflected in the statutory records and returns submitted to the department.

7. The Hon'ble Supreme Court in the case of **Amco Batteries Ltd. v. CCE, Bangalore**[6], held that extended period was not applicable where the entire movement of the goods was recorded in regular

4 2007 (208) ELT 208 (T)
5 1994 (72) ELT 948 (T)
6 2003 (153) ELT 7 (SC)

books of accounts and proper documentation of the delivery maintained and the appellant was entitled to cenvat credit and had no reason to suppress the facts in the case as both the units were eligible to avail cenvat credit.

8. Further, the specified duty paying documents like invoices/bill of entry were though in the name of Head Office or Unit No.I but were endorsed and received and utilized in the Unit No.II, in such circumstances, in view of settled law we are of the opinion that the appellant is entitled to avail the cenvat credit.

9. The hon'ble apex court in the following cases have held that mere omission or failure to indicate the correct information cannot be considered to be a case of suppression. Elaborating on the aspect the apex court held "suppression" has to be a willful act with intent to evade payment of duty and that extended period was not invocable once the assessee had categorically informed the department of their acts and actions :

- **Continental Foundation Joint Venture v. CCE, Chandigarh-I**[7]
- **Modipan Fibre Company v. CCE**[8]
- **Pushpam Pharmaceuticals Company v. CCE, Bombay**[9]

10. In the case of **Tooltronics vs. CCE, Mumbai-II** [10] where the invoice was in the name of the Andheri unit of the assessee, while the goods were actually received at their Ghatkopar plant, it was held that the anomaly was a "minor technical deficiency", not warranting

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7 2007 (216) ELT 177 (SC)
8 2007 (218) ELT 8 (SC)
9 1995 (78) ELT 401 (SC)
10 2006 (205) ELT 946 (T)

disallowance of cenvat credit. In the present case, it is stated that the Unit II of the appellant is a mere division where the user is a division of the importer, and both the divisions/units had their registered offices at the same place. Under such circumstances the Tribunal has held that the user could avail credit on the strength of the Bill of Entry endorsed in its favour by the importer. Similarly in several cases where the invoices are in the name of registered Head office instead of in the name of actual user, it has been clarified that credit should not be denied merely because the invoice is not in the name of actual, user, provided (i) the entire consignment is received in its original packed condition and (ii) the duplicate copy of invoice endorsed by the registered Head Office to the effect that the consignment is covered by the Invoice and is delivered to the manufacturing unit for availing credit. In this connection Board's Circulars issued vide Circular No. 179/13/96-CX dated 29/2/96 & 211/45/96-CX dated 14/5/96 are relevant and came to the aid of the appellant.

11. In view of the forgoing, we consider the lapse as a procedural, not warranting disallowance of Cenvat credit for reasons and circumstances as stated above. There is no evidence to suggest that the goods were not received by the Unit-II or utilized in the process of production of goods, ultimately exported. Also in view of discussions supra extended period of limitation cannot be invoked in the present matter.

12. The order of the lower authority is therefore set aside as being not legal and proper and the appeal filed by the appellant is allowed with consequential relief, if any, as per law.

(Operative part of the order was pronounced in the open Court.)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

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