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

REGIONAL BENCH - COURT NO.2

**Excise Appeal No.76150 of 2016**

(Arising out of Order-in-Original No.57-58/COMMR/BOL/16 dated 09.03.2016 passed by Commissioner of Central Excise & Service Tax, Bolpur.)

**M/s. Vision Sponge Iron Private Limited**
(Vill. – Rakta, P.O.-Madhukunda, P.S. Santuri, Purulia-723121.)

**...Appellant**

*VERSUS*

**Commissioner of Central Excise & Service Tax, Bolpur**

**.....Respondent**

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

**APPEARANCE**

Ms. Shivangi Lata, C.A. 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. 77106/2024**

DATE OF HEARING : 25.09.2024
DATE OF DECISION : 25.09.2024

**Per : RAJEEV TANDON :**

The appellant being aggrieved by the Order-in-Original No.57-58/COMMR/BOL/16 dated 09.03.2016 passed by Commissioner of Central Excise & Service Tax, Bolpur, has filed the instant appeal.

2. The facts of the case in brief are as under:-

2.1 The appellant were issued show cause notice alleging contravention of the provisions of Rule 3(1) of the Cenvat Credit Rules, 2004[1] having availed Cenvat credit of CVD paid at concessional rates, at the time of import of coal in terms of Notification No.12/2012-CUS

**1 The Rules**

dated 17.03.2012 as amended or Notification No.12/2013-CUS dated 01.03.2013. Two show cause notices were issued to the appellant for the period 2013-14 (upto February 2014) and March 2014 to February 2015 proposing recovery of the said Cenvat credit under Rule 14 of the Rules read with Section 11A and Section 11AA of the Central Excise Act, 1944[2]. Demand for recovery of interest along with proposal for imposition of penalty under Rule 15(2) of the said Rules read with Section 11AC of the Act were also made out in the notice.

2.2 The learned adjudicating authority confirmed the show cause notice seeking recovery of the said Cenvat credit of Rs.1,67,84,043/-. He also imposed equal amount of penalty on the appellant and sought recovery of interest from the appellants under Rule 14 of the Rules read with Section 11AA of the Act.

2.3 The appellant while importing coal during the material period paid duty at concessional rate and availed Cenvat credit of the duty so paid at the time of import. The appellants paid CVD @ 1% or 2% as the case may be in terms of Notification No.12/2012-CUS (Sl.No.67) dated 17.03.2012 or Notification No.12/2013-CUS dated 01.03.2013 as amended against the specified CVD of 6% as applicable to chapter sub-heading 27.01. It is the case of the department that condition for payment of concessional CVD was that the assessee would not avail Cenvat credit as per provision of Rule 3(1) of the Cenvat Credit Rules, 2004. It was pointed out in the notice that Rule 3(1)(vii) of the Rules specify that cenvat credit shall be allowed if the additional duty leviable under section 3 of the Customs Tariff Act equivalent to the duty of excise as specified under Rule 3 of the Rules is paid. Thus, it is the department’s contention that the credit of CVD was only applicable when it is paid @6% as specified in the First Schedule of the Central Excise Tariff Act and that no credit was admissible in case duty was paid at a concessional rate.

3. We have heard the arguments and pleadings made by the two sides and perused the case records.

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**2 The Act**

4. It may be pointed out that the subject matter is no more *res integra* and the issue has been decided in favour of the appellants in a slew of cases. This Tribunal in the case of **Jaypee Sidhi Cement Plant vs. Commr. of CGST, Cus. & C.Ex., Jabalpur**[3] under identical circumstances had held as under:-

> ***"8.*** *The narrow compass of the adjudication, therefore, remains as to 'whether under Customs notification against S. No. 67 i.e., while importing the coal, the appellants were entitled to avail the Cenvat credit on the amount of CVD paid.*
>
> > *The Cenvat credit is applicable as per Rule 3(1) of the Cenvat Credit Rules, 2004, clause 7 thereof entitles the appellants to avail the Cenvat credit in the given circumstances.*
>
> *The said Rule itself clarifies that the Cenvat credit of duty of excise is not allowed to be taken when paid on any goods specified under S. Nos. 67 and 128 of Excise Notification No. 12/2012, dated 17-3-2012. Admittedly, the notification relied upon by the department for denying the impugned benefit to the appellant is Customs Notification No. 12/2012, dated 17-3-2012. The restriction of Rule 3 is not applicable to the said notification. Above all, the Hon'ble Supreme Court in the case of SRF Ltd. v. CC Chennai [2015 (318) E.L.T. 607 (S.C.)] has held that Excise Notification No. 12/2012 is applicable only in respect of any digged or manufactured coal and not in respect of imported coal. The import whereof is allowed to have exempted rate of CVD vide Customs Notification No. 12/2012-Cus."*

5. The Hon'ble Calcutta High Court in an appeal filed by the department in the case of **Commissioner of CGST & C.EX., Bolpur Commissionerate vs. Shyam Steel Industries Ltd.**[4] had upheld the order of the Tribunal reported as **Shyam Steel Industries Ltd. vs. Commissioner of CGST & C.EX., Bolpur**[5], whereby after a detailed

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**3 2019 (369) E.L.T. 1673 (Tri.-Del.)**
**4 2022 (382) E.L.T. 329 (Cal.)**
**5 2022 (382) E.L.T. 366 (Tri.-Cal)**

finding in the matter on identical question involved had found no illegality in the availment of Cenvat credit on imported coal when CVD thereon was paid at concessional rate as prescribed in terms of of the said Notification. The Tribunal in the said case had essentially relied on the earlier decisions rendered by various Benches of the Tribunal.

6. As the issue involved in the present matter is no more *res integra*, we find no merit in the case of the Revenue and therefore set aside the order of the lower authority and allow the appeal 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)**

**sm**