IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH – COURT NO. 1
Excise Appeal No. 170 of 2011

(Arising out of Order-in-Original No.79/Commr./BOL/2010 dated 30.12.2010 passed by Commissioner of Central Excise, Bolpur)

M/s. Sharp Ferro Alloys Ltd. **: Appellant**
Kamalpur, Durgapur-713204, Dist.-Burdwan, West Bengal

VERSUS

Commissioner of Central Excise, Bolpur **: Respondent**
Sian Bolpur, Dist. Birbhum, West Bengal.

APPEARANCE:

Mr. Darpa Narayn Chatterjee, Advocate for the Appellant

Shri P.K.Ghosh, Authorized Representative for the Respondent

CORAM:

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

FINAL ORDER NO. / 2024

DATE OF HEARING :19.09.2024

Order : [Per Shri R.MURALIDHAR]

The appellant has taken Cenvat credit on various items such as HR coils, HR Sheets, M.S. Angles, M.S. Channels and MS plates which have been used for manufacture of their capital goods or were used for giving structural support to the capital goods used within the capital premises.

2. On the ground that the appellant is not eligible to take Cenvat Credit on such items, the ShowCause Notice was issued demanding reversal of Cenvat Credit of Rs. 1,39,50,334. The appellant submitted that these goods have been used for manufacturing of capital goods or to give support for the capital goods. Towards this, they have submitted copies of the Chartered Engineer's Certificate. However, the Adjudicating Authority confirmed the demand. Being aggrieved the appellant is before the Tribunal.

3. The Ld. Advocate appearing on behalf of the appellant submits the details of the grounds taken in their appeal and also submits copies of the Chartered Engineer's certificate towards the usage of these goods in their manufacturing process.

4. He relies on the case law of "**Maa Vaishnavis Sponge Ltd**." case decided by this Bench. He submits that in this case, it has been held that the appellant was eligible for the Cenvat Credit. In the present case, the Cenvat Credit has been taken during the period 2006-07 to December, 2009. He submits that in the cited case law also same period was involved. Therefore, he prays that the present appeal may be allowed.

5. Ld. Authorized Representative reiterates the findings of the Adjudicating Authority. Heard both sides.

6. We find that the appellant has brought the goods and used within their factory premises. By way of Chartered Engineer's Certificate, this documentary evidence is brought in before us.

7. Further we find that the issue is no more res integra. This Bench in the case of M/s. MAA Vaishnavi Sponge Limited versus Commissioner of Central Excise & Service Tax, Rourkela, this Bench has held as under:

"*10. We find that the Ld. Adjudicating Authority had confirmed the demand of recovery of Cenvat Credit on items such as Cement, TMT Bar, Beam, Angle, Channels &Joist by relying on the judgement of the Larger Bench of the Tribunal in the case of Vandana Global Ltd., as provided supra. However, the said judgement, as rightly pointed by the Ld.Advocate* *has been quashed by the Hon'ble High Court of Chhattisgarh. Also, the Hon'ble Calcutta High Court in the case of Surya Alloy Industries Ltd. v. Union of India reported as 2014 (305) ELT 47 (Cal) had disapproved the judgement of the Larger Bench. Thus, we are inclined to state that the Cenvat Credit of the items mentioned supra is an eligible Cenvat credit upto 06/07/2009 and hence we are of the view that the appeal to this extent ought to be allowed.*

11. As regards the period post 07/07/2009, it has been stated by the Ld.Advocate appearing for the Appellant, that they are not pressing for the same and only have requested for waiver of penalty as the issue involved interpretation of law. We find force in such argument as the issue is related to interpretation of law. Hence the imposition of penalty cannot be sustained in the instant case."

8. The Tribunal in the case of M/s. Archidply Industries Ltd. Versus Commissioner of Central Excise (Appeals-L), Bangalore, has held as under:

" *7. We find that the issue is no longer res integra, as far as the period prior to 07.07.2009 is concerned. It is covered by the judgement of this Tribunal rendered in the case of M/s. BMM Ispat Ltd. vs. CCE, Belgaum vide Final Order No. 20270-20271 wherein this Tribunal had elaborately discussed the ratios rendered in the case of Vandana Global Ltd. (supra) and Thiru Arooran Sugars vs. CESTAT, Chennai; 2017 (355) ELT 373 (Mad.) and also decision of Larger Bench of this Tribunal in the case of Mangalam Cement Ltd. vs. CCE, Jaipur-I: 2018 (360) ELT 737 (Tri-LB), wherein it is held that CENVAT credit on various inputs such as MS Angles, MS Channels, MS beams, MS joists, MS plates, etc.*

used in the fabrication of various machineries, support structure, platforms for machineries and equipment etc used in the factory, is admissible."

9. We find that the ratio laid down in the above cases are squarely applicable to the facts of the present case. Accordingly we set aside the impugned order.

10. The appeal is allowed with consequential relief, if any as per law.

(Dictated and pronounced in the open court)

(R.MURALIDHAR)
MEMBER (JUDICIAL)

(RAJEEV TANDON)
MEMBER (TECHNICAL)

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