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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 76847 of 2019

(Arising out of Order-in-Appeal No.35/BOL-ST/2019-20, dated 13.05.2019 passed by Commissioner of CGST & Central Excise, Siliguri Appeals, Siliguri)

M/s. Super Smelters Private Limited (Unit-III)
(Jamuria Indistrial Estate, Ikra, Jamuria-713362, West Bengal)

Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate
(Nanoor Chadidas Road, Sian, Bolpur-731204, Birbhum, W. B.)

Respondent

With

Excise Appeal No. 76848 of 2019

(Arising out of Order-in-Appeal No.35/BOL-ST/2019-20, dated 13.05.2019 passed by Commissioner of CGST & Central Excise, Siliguri Appeals, Siliguri)

M/s. Super Smelters Private Limited (Unit-III)
(Jamuria Indistrial Estate, Ikra, Jamuria-713362, West Bengal)

Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate
(Nanoor Chadidas Road, Sian, Bolpur-731204, Birbhum, W. B.)

Respondent

APPEARANCE :

Mr. V. K. Puri, Advocate for the Appellant
Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

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

FINAL ORDER NOs.75338-75339/2023

Date of Hearing : 4th May 2023
Date of Decision : 4th May 2023

PER R. MURALIDHAR

The Appellant is a manufacturer of Sponge Iron, M. S. Billets etc. In the course of therefore manufacturing, they bought coal, coke, Pig Iron, M. S. Scrap, etc. They were taking Cenvat Credit for such inputs as these inputs were used in or in relation to manufacture of their finished goods on which Excise Duty was being paid at the time of clearance of the same.

2. Apart from consuming these inputs from time to time, they have also transferred some of these inputs to their own sister Units and reversed the Cenvat Credit in terms of Rule 3(5) of CCR, 2004. They have also sold some of these inputs which were rendered unusable and reversed the Cenvat Credit for such clearances. The Department took the view that transfer and sale of such inputs would amount to rendering of services in the category of 'Trading Services'. Since trading activities is an exempted service, Show Cause Notice was issued demanding the amount of 5%/6% of the value of such traded goods. After due process, the lower Authorities confirmed the demand. Being agitated by the impugned OIAs, the Appellants are before the Tribunal.

3. The Learned Advocate appearing on behalf of the Appellants submits that the major portion of the inputs was consumed by themselves and a very small portion was transferred to their sister Unit and such transfers cannot even be taken as sale or trading activities. Even for such transfers, Department has issued and confirmed the demand. He also submits that in the course of use of the raw materials, some inputs get rendered as unusable and have to be sold in the market. While selling such products in the market, they have duly reversed the proportionate Cenvat Credit. Therefore, he submits that the Department should not have confirmed demand on the ground that these clearances are on account of 'trading of goods'. He relies on the following case laws:-

(1) Commissioner of Central Excise, Ghaziabad, Vs. UP Telelinks-2015 (329) E. L. T. 888 (Tri.-Del.)

(2) Commissioner of Central Excise & Service Tax, Ghaziabad Vs. Mahaveer Cylinders Ltd.-2016 (341) E. L. T. 361 (Tri.-All.)

(3) Suyash Auto-Press Components & Assemblies P. Ltd. Vs. CCE, Pune-III-2018 (363) E. L. T. 1128 (Tri.-Mumbai)

4. He submits that in all these cases, the Tribunals have been consistently holding that when the inputs 'as such' have been cleared to their sister Units or have been even sold to third Parties and Cenvat

Credit has been reversed at the time of the clearance, there is no need to pay any Excise Duty in terms of Rule 6(3) of the Cenvat Credit Rule, 2004. Therefore, he prays that the Appeal may be allowed on merits.

5. The Learned AR reiterates the findings of the lower Authorities and submits that they have correctly come to a conclusion that Excise Duty is required to be paid by the Appellant on such clearances.

6. Heard both sides and perused the documents.

7. Admittedly, the major portion of inputs were being consumed by the Appellants themselves in their factory premises. They have also cleared some of the inputs/raw materials to their own sister units after reversing the Cenvat Credit properly. Very small portion of inputs have been cleared to third parties. Even therein they have reversed the Cenvat Credit.

8. In the case of CCE, Ghaziabad Vs. UP Telelinks, the Hon'ble Tribunal has held as under:-

> *7. I have gone through the records. Considering the submissions advanced by both sides. In the impugned order, none of the lower authorities have considered the defence taken by the assessee that they have cleared inputs as such and no verification has been done to that effect whether the assessee has cleared inputs as such or was involved in the activity of trading. Show cause notice has been issued only on the basis of figures shown in the balance sheet. <u>For removal of inputs as such, Rule 3(5) clearly states that if inputs is removed as such, the assessee is required to reverse only Cenvat credit availed on such inputs. In judicial terms which has been contended by the assessee as mentioned hereinabove, if inputs is removed as such, in that case the assessee is required to reverse the credit availed on the inputs and not required to reverse proportionate credit on inputs service pertaining to such goods and required 6%/8% of the value of such goods. As revenue has failed to produce any evidence to show that appellant was involved in the trading activity, it may cleared inputs as such. In these set of facts, Cenvat credit taken</u>*

by the assessee on the input which are cleared as such, is attributable to proportionate reversal is not supported by cogent reasons. Therefore, as per the provisions of Rule 3(5) of Cenvat Credit Rules, 2004 the assessee was to reverse the Cenvat credit availed on inputs cleared as such. Therefore, I hold that assessee is not required to pay any amount equivalent to 6%/8% of the value of inputs cleared as such or reversal of proportional credit attributable to input cleared. With these terms, assessee's appeal is allowed and Revenue's appeal is dismissed. [Emphasis supplied]

9. In the case of CCE & ST, Ghaziabad, Vs. Mahaveer Cylinders Ltd., the Hon'ble Tribunal has held as under:-

> 5. *I have taken rival contention into consideration and I am of the view that removal of input as such by a manufacturer cannot be treated as trading activity and hence allegations in the show cause notice are not sustainable. Therefore, I reject the appeal.* The respondent shall be entitled to consequential relief. Cross-Objection No. 51546 of 2015 also stand disposed. [Emphasis supplied]

10. In the case of Suyash Auto-Press Components & Assemblies P. Ltd. Vs. CCE, Pune-III-2018 (363) E. L. T. 1128 (Tri.-Mumbai), the Hon'ble Tribunal has held as under:-

> *4. I have carefully considered the submissions made by both the sides and perused the records. The Revenue has demanded the amount under Rule 6 equal to 5%/6% of the value of the traded goods i.e. steel sheets sold to their vendor. There is no dispute that the said removal is governed by Rule 3(5) of the Cenvat Credit Rules, 2004. It is admitted fact that the appellant has cleared the said steel sheets on payment of duty. The department is considering the said clearances as exempted service being a trading activity. I find that though this removal of steel sheets is indeed a trading activity, but the said clearances were made on payment of excise duty. Therefore, it cannot be considered as an*

exempted service. Rule 6 applies on the trading activity only in a case when the goods are purchased and sold without taking credit and without payment of duty. Then only such trading will be considered as exempted service. In the present case, the removal of input under Rule 3(5) was made admittedly on payment of duty. Therefore, there is no case of trading activity which is an exempted service. Accordingly, there is no application of Rule 6(3) of the Cenvat Credit Rules, 2004. Accordingly, the impugned order is set aside. The appeal is allowed. [Emphasis supplied]

11. The present issue is squarely covered by the above decisions of the coordinate Benches of the Tribunals.

12. I allow both these Appeals with consequential relief, if any.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja