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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76892 of 2019

(Arising out of Order-in-Appeal No. 50-51/HWH/CE/2019-20 dated 30.04.2019 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. Govind Steel Co. Limited **: Appellant**
100/1, G.T. Road, Rishra,
District: Hooghly, West Bengal,
PIN – 712 248

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Howrah Commissionerate
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

AND

Excise Appeal No. 75037 of 2022

(Arising out of Order-in-Appeal No. 64/HWH/CE/2021-22 dated 22.11.2021 passed by the Commissioner of Central Excise (Appeals-II), Kolkata, Bamboo Villa, 3rd Floor, 169, A.J.C. Bose Road, Kolkata – 700 014)

M/s. Govind Steel Co. Limited **: Appellant**
100/1, G.T. Road, Rishra,
District: Hooghly, West Bengal,
PIN – 712 248

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Howrah Commissionerate
M.S. Building, Custom House, 15/1, Strand Road,
Kolkata – 700 001

APPEARANCE:

Shri Arijit Chakraborty, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NOs. 76142-76143 / 2025

DATE OF HEARING / DECISION: 30.04.2025

ORDER: [PER SHRI ASHOK JINDAL]

The appellant is in appeal against the impugned orders.

2. The facts of the case are that the appellant is a manufacturer of C.I. Sanitary Casting, Slag Pot, Bottom Plate, iron Casing, C.I. Weight, Ingot Mould, etc. During the impugned periods i.e., April 2011 to February 2013 and March 2013 to June 2017, the appellant had availed and utilized CENVAT Credit of duty paid on the materials such as M.S. Round, M.S. Flat, M.S. Plate, M.S. Joists, M.S. Angle, M.S. Channel and TMT Bars received in their factory. The Revenue alleged that by such availment of credit on the above goods, the appellant have contravened the provisions of Rule 2(k) of the CENVAT Credit Rules, 2004 on the ground that the said goods were neither inputs nor capital goods and had not been utilized in or in relation to the manufacture of final products.

3. Accordingly, Show Cause Notices were issued to the appellant for the periods under dispute proposing disallowance and recovery of the alleged irregular CENVAT Credit availed by the appellant, along with applicable interest, and penalty.

4. The matters were adjudicated and thereafter vide Orders-in-Original dated 05.04.2018 and 18.02.2021, the demands as proposed in the Show Cause Notices were confirmed against the appellant, along with interest. Penalties were also imposed vide the above adjudication orders.

5. Thereafter, on appeal, the Ld. Commissioner (Appeals), vide the respective impugned orders, has upheld the demands confirmed in the above said Orders-in-Original.

6. Against the said orders, the appellant is before us.

7. The Ld. Counsel appearing on behalf of the appellant submits that the said iron and steel products received in their factory were meant for packing of cast articles of iron in order to protect them from breakage and damage during transit and without such crates made of iron and steel products, the goods for export cannot be packed / exported; therefore the same are eligible for CENVAT Credit. In this regard, he has submitted that issue involved in the present appeals is no longer *res integra* as the said issue has already been settled by this Tribunal in the appellant's own case vide *Final Order No. 76963 of 2019 dated 17.12.2019 in Excise Appeal No. 184 of 2012 [CESTAT, Kolkata]* wherein, under identical facts and circumstances of the case, this Tribunal has allowed the appeal filed by the appellant. Accordingly, the Ld. Counsel for the appellant prays for setting aside the impugned orders.

8. On the other hand, the Ld. Authorized Representative of the Revenue supported the impugned orders.

9. Heard the parties and considered their submissions.

10. We find that the very same issue has been dealt with by this Tribunal, in the appellant's own case vide *Final Order No. 76963 of 2019 dated 17.12.2019 in Excise Appeal No. 184 of 2012 [CESTAT, Kolkata],* wherein this Tribunal has observed has under: -

> *"7. The contention of the appellant is that they are exporting cast article of iron and steel and for that they require packing material which they are making*

from MS Rounds, MS Tor, MS angles, MS channels, MS flat, MS joist, plywood lead scrap and aluminium scrap. A spot memo was issued against them that they are using these for making packing material. The applicant could not produce documents/evidence that they have utilized the aforesaid material in manufacturing packing material.

8. The contention of the appellant is that they have replied and explained the way and manner in which the material has been utilized in manufacture of the packing material. The contention is that it has never been the case of the department that the input received by them was not duty paid and were not received in the factory. It is also not the case of the department that they have removed the inputs from their factory without payment of duty. The contention is that during the material period, they have exported the quantity of 40,000 MT (approx.) and the input utilized for the packing material was only 2,000 MT approx. which is only 2%. The contention is that there is 20% losses in making the packing material.

9. We find that learned Commissioner in his finding has not disputed receipt of cenvatable material and their duty paying character. RG-23A Part-I/RG-23C Part-I Register maintained during the material period indicate that the duty paid on material was used entirely. Learned Commissioner has also recorded in his finding that against the spot memo issued to them in course of audit, the said assessee mentioned that the MS Rounds, MS Tor, MS angles, MS channels, MS flat, MS joist, plywood lead scrap and aluminium scrap has been utilized for manufacturing of packing material.

10. Prima facie, we find that the contention is that during the material period, they have exported the quantity of 40,000 MT (Approx.) and the input utilized for the packing material was only 2,000 MT approx. which is only 2%, which is also not disputed by the Commissioner. In such a situation we do not find any substance in the charge that the inputs have not been used in the manufacture of packing materials, which were used as the packing material for export goods. Accordingly, the impugned order is not sustainable and liable to be set aside, which we do so. Appeal is accordingly allowed."

11. Considering the fact that the issue has already been settled by this Tribunal in the appellant's own case *(supra)*, we are of the view that the above ratio is squarely applicable to the present case. Therefore, by following the ratio laid down in the above decision, we hold that the demands confirmed against the appellant in the impugned orders are not sustainable. Consequently, we set aside the demands confirmed against the appellant. Accordingly, no penalty is imposable on the appellant in the facts and circumstances of the case.

12. In the result, we set aside the impugned orders and allow the appeals filed by the appellant, with consequential relief, if any, as per law.

(Dictated and pronounced in the open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd