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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76705 of 2017

(Arising out of Order-in-Appeal No.62-64/DGP/2017-18 dated 05.06.2017 passed by Commissioner of Central Excise, (Appeal-II), Kolkata.)

Commissioner of CGST & CX, Bolpur Commissionerate
(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

...Appellant

VERSUS

M/s. GE Power Ltd.
(Formerly known as M/s. ALSTOM India Ltd.)

.....Respondent

(Durgapur, Pin-713206.)

APPEARANCE

Shri S.K.Dikshit, Authorized Representative for the Revenue
NONE for the Respondent (s)

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

FINAL ORDER NO. 76726/2025

DATE OF HEARING : 02.07.2025
DATE OF DECISION : 02.07.2025

Per : RAJEEV TANDON :

The Revenue is aggrieved by the Order-in-Appeal No.62-64/DGP/2017-18 dated 05.06.2017 passed by Commissioner of Central Excise, (Appeal-II), Kolkata.

2. When the matter was called up, none were present for the Respondent. This being a Revenue appeal, and an old matter involving duty demands for the period May, 1999 to March, 2000, we felt

appropriate to take up the appeal for consideration, with the help of the learned AR.

3. The issue in the present matter revolves on a very narrow compass. The respondents having been proposed denial of Modvat credit on various inputs/capital goods received in the factory premises during the aforesaid period, were issued eight periodic show cause notices for the aforesaid period, pointing out that they had availed Modvat credit on various inputs/capital goods received in the factory premises, and that in some cases, the respondent did not account for the said goods in RG-23A Part-I. The notice further alleged that in some cases credit was taken on the strength of endorsed invoices. It alleged that in some cases the respondent had not properly maintained the RG-23C Part-I and therefore the appellant had wrongly availed irregular credit violating the provisions of the Rules 57G(1), 57G(3), 57G(7), 57Q(I), 57T(I), 57T(9) read with Rule 57A of the Central Excise Rules, 1944.

4. The appellate authority in his detailed and analytical findings have however held the omissions as pointed out aforesaid of a technical nature and had allowed the appellant the benefit of availment of Modvat credit essentially because he had arrived at a finding that the said goods were used in the manufacture of finished goods and therefore the respondent herein were entitled for credit during the relevant period. The crux of the Commissioner(Appeals)'s findings are scanned hereinbelow for sake of records :-

7. From the case records, it is seen that there is no dispute regarding receipt of the duty paid impugned inputs/capital goods in the appellant's factory premises; the only dispute was that the appellant had not maintained RG 23A/C Part-I properly and failure to produce any collateral evidence in favour of their claim of availing credit on endorsed invoices.

8. It is contention of the appellant that they have received the impugned goods/capital goods at their factory premises on the basis of valid duty paid documents and used the same in the manufacture of their final products. From the case records, it is seen that the impugned notices were issued on the basis of scrutiny of the duty paying documents, RG-23A Part-I & II/RG 23C Part-I & II documents and the returns submitted by the appellant during the period of May,1999 to March,2000. The Department had not detected any discrepancy / made any dispute in respect of the above said submitted documents, except improper maintenance of RG 23A/C Part-I. In absence of any such discrepancy or dispute, it can be clearly stated that appellant had entered the impugned goods in their statutory records when the same was physically received by them in their factory premises. The Department also did not dispute about receipt of the impugned goods at their factory premises. But, the Department failed to produce any other alternate source of inputs/capital goods during the relevant period for manufacturing finished products. There is no dispute that the appellant was really engaged in the manufacturing activities at their factory premises during the relevant period and for the manufacture of the finished goods they needed raw materials. Therefore, in absence of any other source of alternative inputs/capital goods during the relevant period and in absence of raising any such discrepancy, it can also be clearly stated that after the receipt of the said impugned goods at their factory premises, the same had been used in the manufacture of their finished goods which again had been duly recorded in the statutory production records of the appellant and had been cleared on the strength of invoice issued by the appellant under relevant CE rule and on payment of appropriated duty leviable thereon. The finished goods made thereon by the appellant had been cleared on payment of duty as evident from the central excise duty paid documents as there was no dispute in regard of duty payment and returns have always been scrutinized on the bases of which the appellant had availed and utilized the credit in the removal of their finished goods. The Department also did not dispute the authenticity of the duty paying documents on the basis of which they availed the impugned credit. Therefore the duty paid nature of the said impugned goods received by the appellant is also found by the lower authority. The lower authority has no [illegible]

appellant had received any alternative inputs/capital goods for the manufacture of their final products. Consequently the aforesaid facts conclusively go into prove that the goods in question had been received in the appellant's factory and had been used in the manufacture of final products which have been cleared on payment of duty. On the contrary the Department failed to prove beyond doubt that the subject goods were not used by the appellant. The Department also never intended to inspect/verify the capital goods installed in their factory premises. Once the receipt of inputs/capital goods had not been alleged as not received in the factory, the natural and obvious corollary was that they were used in the manufacturing process unless the Department leads through evidence that the inputs/capital goods had either been clandestinely removed or destroyed. In view of the above, it is seen that as the appellant have discharged the Central Excise duty on the final product manufactured out of the alleged inputs & by using the alleged capital goods and if the Department is of the opinion that the alleged goods were not used by the appellant then it is to duty of the Department to prove that any other alternative inputs/capital goods were used in the final products. Department has failed to do so thus, it proves that appellant have used the alleged goods in their manufacturing process.

9. I also observe that neither the show cause notices allege any other source of procurement of the said goods in question, received under the duty paying documents nor the impugned orders found any other source of procurement of such goods. The provisions governing the availment of the credit envisages that the assessee availing the credit should ensure that the inputs/capital goods should have suffered duty at the hands of the manufacturer and the inputs covered under the invoices have been received and the same have been utilized in the manufacture of their final goods. In the instant case, the appellant purchased the said goods from different suppliers, registered with the Central Excise Department by making payments and the goods were received by the appellant and the same have been used by the appellant in the manufacture of their final goods; and contrary to which there is no valid evidence. No investigation has been made at unit of the appellant which could have supported the findings of the lower authority.

10. The Department had not made any enquiry/investigation at the consignee's end of the appellant to inspect/verify the receipt of the goods manufactured by the appellant by using the said impugned goods. There is also no evidence that none of the consignees of the goods has denied the receipt of goods cleared by the appellant during the relevant period. Further, the impugned notice and order are silent as to how the appellant manufactured finished material without receiving the inputs/capital goods. The law is settled that as long as duty payment is accepted on outputs, the benefit of credit available in law cannot be denied. Only on the basis of procedural lapses, i.e., all the entries of RG 23A/C Part-I were not written or no declaration was filed, the huge credit is sought to be disallowed whereas the allegations of not using the impugned goods in the manufacture of their final products, were in isolation with no corroboration or valid evidence. Therefore, mere allegation made without any

investigation or valid evidence is not sustainable without any conclusive, foolproof and corroborative evidence emerging from such findings of the lower authority.

11. In the above context, I find in the case of Sunil Steels vs. Commissioner of Central Excise, Raipur [2006(202) E.L.T.847(Tri.-Del.)], the CESTAT, Principal Bench, New Delhi held :- " *2. The submission of the learned counsel for the appellant is that the very issue as to the effect of taking credit in Part-II of RG-23A register without entering all particulars in Part-I had come up before this Tribunal in several proceedings and the Tribunal held that eligibility to credit is in no way affected by the non-filling of particulars in Part-I register. Learned counsel has relied upon the decisions of this Tribunal in the case of C.C.E., Meerut v. Subros Ltd. - 1998 (100) E.L.T. 546, A.S.W.M. Spinning Mills v. C.C.E., Jallandhar - 2005 (182) E.L.T. 217 and Timex Watches Ltd. v. C.C.E., Noida - 2003 (158) E.L.T. 494.*

3. A perusal of the decisions of this Tribunal makes it clear that clerical failure to fill up particulars in Part-I of the register is no ground for denying credit and for imposing penalty on the appellant. This is the view that the Tribunal had been taking consistently from 1998. In such a situation, it was erroneous on the part of the Commissioner (Appeals) to have passed the impugned order.

4. In the result, the impugned order is set aside and the appeal is allowed with consequential relief, if any, to the appellant."

12. I also find in the case of Bright Brothers Ltd. vs. Commissioner of C. Ex., New Delhi [2004(176) E.L.T.254(Tri.-Del.)], the CESTAT, NB, New Delhi held :-"*4. With regard to the credit of Rs. 21,217/-, the impugned order has denied the credit on the ground that Shri Jahangir Senior Commercial Manager of the assessee had stated that credit to that extent had been taken without entry in the RG 23 Part I. The appellant's contention is that all the goods in question had been received under invoice and the receipt of the goods remained evidenced by gate entry register, original invoices, amounts paid to the consignee and the computer entries in the appellant's books of accounts. The learned Counsel has pointed out that, in such a situation, where the receipt of the goods was not in dispute, there is no occasion for denial of credit. He has taken us through invoices to show that the receipt of the goods remained noted on them. The invoices also show that credit had been taken in RG 23-Part II.*". The above case law was affirmed in 2009 (236) ELT 660 (Punjab & Haryana High Court).

13. I further find in the case of Essar Oil Ltd. vs. Commr. of Central Excise & Service Tax, Rajkot [2014(309) E.L.T. 336(Tri.-Ahmd.)], the CESTAT, WZB, Ahmedabad held :- " *7. (ii) As regards the denial of Cenvat Credit of Rs. 38,74,887/-, we find that the entire dispute is regarding the non-submission of intimation of the receipt of capital goods and other goods to the Jurisdictional Superintendent. As has been already accepted and undisputed that the capital goods and other goods were received and consumed in the setting up of the unit, mere non-filing of the declaration cannot be a ground for denial of credit in the view which has been upheld by the Hon'ble High Court of Madras in the case of Kothari Sugars & Chemicals (supra). We also find strong force in the contentions raised by the Ld. Counsel that sustantative benefits should not be denied to an assessee only on the ground of non-fulfillment of procedural conditions. We are fortified*

in our this view by the judgment of the Apex Court in the case of Mangalore Chemicals & Fertilizers Ltd. - 1991 (55) E.L.T. 437."

14. Further, I find in the case of Chamundi Steel Re-Rolling Mills vs. Collector of C.Ex., Bangalore [1996(81) E.L.T. 563(Tribunal)], the CEGAT, PB 'B', New Delhi held :-

" 4. We have carefully considered the pleas advanced from both sides. Having regard to the overall facts and circumstances of the case, we remand the matter to the adjudicating authority i.e. Collector of Central Excise, Bangalore on the following two issues :

1. Whether the demand of duty, raised may be reduced by allowing the modvat credit after verifying the duty paying documents prescribed under Rule 57G(ii). In ascertaining that the inputs used by the appellants are "duty paid", the fact that the appellants have not filed any declaration under Rule 57G is not material for the purpose of disposing of this case. The benefit of modvat credit should not be denied merely on account of non-filing of declaration under Rule 57G or maintenance of RG-23A.

........"

15. In respect of admissibility of credit on the strength of endorsed invoices, it is seen that there was no allegation that the goods had not been received in the factory, an appropriate duty had not been paid and further the goods were not being used in the manufacture. Once these conditions are satisfied, credit cannot be denied on the basis of the said invoices, as the goods were purchased by the appellant and were used in its factory.

16. In the above context, I find in the case of Gautam Weaving Mills vs. Commissioner of C. Ex., Belapur [2008(230) E.L.T.147(Tri.-Mumbai)], the CESTAT, WZB, Mumbai held :- *" 2. I have heard both sides and find force in the submission of the appellants that credit taken on strength of endorsed invoice is admissible to them in the light of the judgment of the Hon'ble Bombay High Court in Simplex Mills Co. Ltd. v. CCE, Mumbai-IV - 2007 (81) RLT 331 (Bom) following the earlier judgment of the same High Court in Marmagoa Steel Ltd. v. UOI - 2005 (192) E.L.T. 82 (Bom.). The High Court has held that if there is no dispute regarding the duty paid nature of the inputs and the inputs have undisputedly been received in the factory and the assessee has taken credit, that is sufficient for the purpose of availment of credit and the deficiency in the duty paying document is not to be held against the assessee for the purpose of denying the substantive benefit of Modvat credit. Following the ratio of the above judgments, I set aside the denial of credit of Rs. 76,913/- to the appellants. However, the penalty is not required to be set aside in toto for the reason that the other contraventions of law, viz. availment of credit twice on the same goods and no discharge of duty liability on certain finished goods, have already been upheld, and accepted by the appellants. The penalty imposed on these two counts is Rs. 45,816/-. I accordingly reduce the penalty to Rs. 45,816/-."*

17. From the case records, it is also seen that the appellant has submitted an affidavit of a person who was a part of the organization at the relevant time, wherein it was certified that all the inputs procured by the company during the said period were used in the manufacture of the final product. During personal hearing, the appellant also submitted a chartered accountant's certificate wherein it was certified that all the inputs on which Modvat credits were taken for the months of May, 1999 to March, 2000 and Modvat credit taken on capital goods for the month of November, 1999, had been duly utilized by the Company in relation to manufacture of finished goods i.e. boiler and boiler parts.

5. The Ld.AR for the Revenue however supports the contentions as raised in the review order primarily holding that the assessee (respondent) had not maintained RG-23C Part-I properly and that the filing of declaration under Rule 57T(1) was mandatory and therefore the respondent were not entitled for availment of the Modvat credit.

6. Heard both sides and perused the records.

7. We are not impressed by the arguments raised by the Ld.AR for the Revenue. In view of a plethora of judicial reasoning as taken note of by the Ld.Commissioner(Appeals) while delivering the impugned order, we are of the view that as long as receipt of goods at the respondent's end was not doubted, availment of credit to them was not deniable. We may also point out that CBEC vide Circular No.181/15/96-CX dated 07.03.1996 had clarified that Modvat credit should not be denied merely on the ground that the declaration had been filed subsequent to the receipt of the capital goods. We are of the view that for minor/procedural/clerical infarctions, it would not be appropriate to deny them the credit, as long as receipt of the inputs/capital goods was not disputed by the Department. Moreover it has now been held in a slew of cases that credit on endorsed invoices can be availed of as long as the receipt of the said goods is not doubted.

8. In view of this express finding that the subject goods were received at the respondent's end and used in manufacture of finished goods, and as also noted vide impugned Order-in-Appeal, as recorded in Para 9, 10, 18 thereof, it would be inappropriate to disallow the

credit for reasons of certain procedural anomalies and irregularity in maintenance of statutory records, as long as it is clearly evidenced that the respondent had in fact received the goods at their end and the same were utilized in the manufacture of finished goods.

7. In view of the aforesaid discussions we find no merit in the appeal filed by the Revenue and no infirmity in the impugned order of the Ld.Commissioner(Appeals). The same is therefore upheld and the appeal filed by the Revenue is dismissed.

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

Sd/	Sd/
(RAJEEV TANDON)	**(R. MURALIDHAR)**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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