

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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76575 of 2016

(Arising out of Order-in-Appeal No.144/COMMR./DE-NOVO-DGP-III/15-16 dated 23.03.2016 passed by Commissioner of Customs, Central Excise & S.Tax, Durgapur Commissionerate)

M/s Shyam Ferro Alloys Ltd

(Raturia Industrial Area, Angadpur, Durgapur-713 215)

Appellant

VERSUS

Commr. of CGST & Central Excise, Durgapur

(Satyajit Roy Sarani, City Centre, Durgapur-713 216)

Respondent

APPEARANCE

Mr. N.K.Chowdhury, Advocate, for the appellant

Mr. S.Dey, Authorized Representative, for the respondent

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

FINAL ORDER NO. -76891/2025

Date of Hearing : 03.07.2025

Date of Decision : 03.07.2025

Per : R. MURALIDHAR :

The appellant has filed an appeal against the impugned order wherein the Excise duty demand has been confirmed on the ground that while clearing the cenvat availed goods in terms of Rule 3(5) of the Cenvat Credit Rules 2004, the appellant has only reversed the cenvat credit taken on such raw materials but has not reversed the proportionate input service tax taken by them on the input GPS services avail by them on account of such goods. Being aggrieved the appellant is before the Tribunal.

2. The learned counsel appearing on behalf of the appellant relays on the case of **Chitrakoot Steel & Power Pvt.Ltd v. Commissioner of Central Excise, Chennai [2008(10) S.T.R.118(Tri-Chennai)]** and **Commissioner of Central Excise, Chandigarh-I v. Punjab Steels[2010(260) ELT521 (P&H)]**. Therefore, he prays that the present appeal may be allowed.

3. The learned AR reiterates the findings of the lower authority and justifies the confirmed demand.

4. Heard both sides.

5. On going through the Show Cause Notice, we find that the demand has been waived solely on the ground that the appellant was clearing the cenvat availed raw materials on payment of Excise Duty by reversing the cenvat credit in terms of Rule 3(5) of the Cenvat Credit Rules 2004, whereas they have not reversed the proportionate input service tax taken on the GPS services.

6. We find that this issue is no more *res integra*. In the cited case of **Chitrakoot Steel & Power Private Ltd. and Commissioner of Central Excise, Chandigarh-I**, the Tribunal has held as under:

On a careful study of the statutory provisions, it is seen that when the credit-availed inputs or capital goods are removed from the factory of the assessee, sub-rule(5) of the Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit. There is no such provision to reverse credit of service tax availed in relation to such inputs or capital goods when removed from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or utilized wrongly in the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. No provision exists in the Finance Act, 1994, which would render utilization of such credit erroneous for the reason that some of the inputs, transport of which yielded GTA service tax credit are returned as not suitable. The credit availed is anyway used to pay duty on the finished goods. In the circumstances, I find that the impugned order sustaining the demand of service tax and education cess to be not sustainable and accordingly vacate the same.

7. The Punjab & Haryana High Court in the case of **Commissioner of Central Excise, Chandigarh-I v. Punjab Steels[2010(260) ELT521(P&H)]** has cited the case of Chitrakoot Steel & Power Pvt. Ltd. v. Commissioner of Central Excise [(2008 (10) S.T.R. 118 (Tri-Chennai) and held as under :

8. The Tribunal reversed the orders passed by the lower authorities with the following observations and relying upon its earlier order passed in Chitrakoot Steel & Power Pvt. Ltd. v. Commissioner of Central Excise [(2008 (10) S.T.R. 118 (Tri-Chennai).

"I have carefully considered the submissions from both the sides and perused the records. The appellant had received certain inputs and for transporting those inputs to the factory, had availed GTA service in respect of which service tax paid was Rs.275684/- and the credit of this service tax on GTA service had also been taken. Subsequently, when the appellant removed those inputs as such he reversed only the credit of excise duty paid on inputs. The Department's contention is that on the removal of the goods as such, in addition to the credit of Central Excise Duty the GTA service tax credit availed in respect of those inputs should also have been reversed. I find that on this very issue, the Tribunal in the case of Chitrakoot Steel & Power Ltd v CCE, Chennai (supra) has held that when the Cenvat availed inputs or capital goods are removed from the factory of the assessee as such, sub-rule 3(5) provides for recovery of the amount of the Cenvat credit availed in respect of such inputs or capital goods and there is no provision to reverse the credit of service tax availed in respect of such goods or capital goods. Following the judgment of the Tribunal, I hold that the impugned order is not sustainable. The same is set aside. The appeal is allowed".

9. It has been specifically mentioned in the memo of appeal by the Revenue that no appeal was preferred by it against judgment relied upon by the Tribunal.

10. By that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(1) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the Finance Act, 1994. Rule 3(5) of the Rules only talks about the Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5. on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added or substituted so as to give a particular meaning. Reference can be made to the observations of a Constitution Bench of Hon'ble the Supreme Court in Mathuram Agrwal v. State of Madhya Pradesh, (1999) 8 SCC 667.

"The intention of the legislature in a taxation statute is to be gathered from the language of the provisions particularly where the language is plain and unambiguous. In a taxing Act it is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. It is not the economic results sought to be obtained by making the provision which is relevant in interpreting a fiscal statute. Equally impermissible is an interpretation which does not follow from the plain unambiguous language of the statute. Words cannot be added to or substituted so as to give a meaning to the statute which will serve the spirit and intention of the legislature. The statute should clearly and unambiguously convey the three components of the tax law i.e The subject of the tax, the person who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statute then there is no tax in law. Then it is for the legislature to do the needful in the matter."

11. In view of our aforesaid discussion, we do not find that any substantial question of law arises in the present set of appeals. Accordingly, the same are dismissed.

8. Following the above decision, which is applicable to the facts of the present case, we set aside the impugned order and allow the appeal with consequential relief, if any, as per law.

Sd/-
(Rajeev Tandon)
Member (Technical)

Sd/-
(R. Muralidhar)
Member (Judicial)

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