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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.75960 of 2016

(Arising out of Order-in-OriginalNo.97/COMMR/DGP/2015-16 dated26.02.2016 passed by Commissioner of Central Excise, Service Tax & Customs, Durgapur.)

M/s.Durgapur Projects Ltd.
(Dr.B.C. Roy Avenue, Durgapur-713201.)

...Appellant

VERSUS

Commissioner of Central Excise, Durgapur
Now Commissioner, CGST & CX, Bolpur

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Dr. Samir Chakraborty, Senior Advocate & Shri Abhijit Biswas, Advocate for the Appellant (s)
Shri P.Das, Authorized Representative for the Revenue

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

FINAL ORDER NO. 76895/2025

DATE OF HEARING :13.06.2025
DATE OF DECISION :13.06.2025

Per : SHRI R. MURALIDHAR

The Appellant, Durgapur Projects Limited, a Government of West Bengal Enterprise, is engaged in generation, transmission and distribution of electricity . They are also involved in manufacture of Metallurgical Coke, Crude Coal Tar and Naphthalene Sludge, etc., falling under Chapter 27 of Central Excise Tariff Act, 1985.During the manufacture of coke, the final product, certain by-products emerge. One such by-product is Coal Gas which attracts NIL rate of duty under the Central Excise Tariff. The Appellant during the period March, 2011 to December, 2013, had sold coal gas (by product) to various parties and had reversed cenvat credit as per Rule 6(3)(1) when the coal gas was cleared. A Show Cause Notice was issued alleging that the appellant failed to maintain separate accounts for the Cenvat Credit, thereby availing Cenvat Credit for the manufacture of both dutiable and exempted goods. The SCN demanded payment of Excise Duty @6% / 8% of the value of the exempted goods cleared by the appellant. After due process, the adjudicating confirmed the demand along with interest and also imposed penalty. Being aggrieved, the appellant has filed the present appeal before the Tribunal.

2. The Ld Senior Counsel, appearing for the appellant submits that the coal-gas is not manufactured per se but the same emerges as a by-product during the process of manufacture of their finished goods. Since it is not possible to maintain separate accounts, the appellant takes the entire cenvat credit and proportionately reverses the cenvat credit attributable to the exempted goods. Therefore, demanding the payment of Excise Duty @ 6% / 8% of the value of the exempted goods is erroneous and not legally sustainable.

3. The appellant relies on the following case laws :

(i) **Commissioner of Central Excise, Bolpur Vs.Indian Iron and Steel Co. Ltd.**, **(2023) 4 Centax 41 (Cal)**,

(ii) **Union of India** Vs. **Hindustan Zinc Ltd.**, **2014 (303) ELT 321 (SC)**.

4. Therefore, the Ld. Senior counsel prays that the appeal may be allowed on merits.

5. He further submits that in the Grounds of Appeal, they have also made submissions regarding the non-applicability of the extended

provisions in their case. Hence, he prays that the confirmed demand for the extended period may be set aside on account of time-bar also.

6. The Ld. A R reiterates the findings of the Adjudicating authority and submits that the appellant has failed to maintain separate accounts for the cenvat credit and has utilized the credit for the common inputs. Therefore, he justifies the confirmed demand.

7. Heard both the sides in detail.

8. It is observed that admittedly the exempted goods in question necessarily emerges as a by-product in the course of manufacture of the finished goods of the appellant. In view of the practical difficulties, the appellants cannot separately account for the inputs going into the manufacture of the finished goods and the exempted goods. As a matter of fact, the alleged exempted goods are not manufactured goods but are the by-products emerging in the manufacturing process.

9. We find that the issue is no more *res integra*. We have gone through the relevant case laws :

Commissioner of Central Excise, Bolpur
Vs. Indian Iron and Steel Co. Ltd., **(2023) 4 Centax 41 (Cal)**,

> **2.**Considering the technical process involved in the production of coke oven gas including subsequent derivation of by-products from it, <u>we are convinced that the impugned inputs have no role in the production of the coke oven gas and these are merely used in the production of the by-products.Hence, the impugned order passed by the authorities below demanding an amount of 20% and 8% of the value in respect of coke oven gas, which is otherwise chargeable to nil rate of duty under the tariff, is not justified</u>. Accordingly, we set aside the impugned order and allow the appeal with consequential benefit to the appellants.

2018 (14) G.S.T.L. 20 (Chhattisgarh)
COMMISSIONER OF C. EX. & CUS., RAIPUR
VsJAYASWAL NECO INDUSTRIES LTD.

7. The Learned Tribunal also noticed that coke fines are not the final product of the manufacturing process of the respondent and it could be treated only as byproduct, which is nothing but in the form of waste and so much so, the respondent is not liable to be visited with any liability on account of Rules 6(3)(b) of the CENVAT Credit Rules having regard to the law laid down in *Hindustan Zinc Ltd.* (supra).

8. Adverting to the provisions contained in Rule 6(2) of the CENVAT Credit Rules and the concept of input and output as emerging out of the definition clause of those Rules, it is evident that the Tribunal had not misdirected itself in arriving at conclusion that coke fines are part of waste resulting out of the manufacturing process in the establishment of the respondent and cannot be subjected to levy or be required to be accounted in term of [Rule] 6(2) or 6(3)(b) of CENVAT Credit Rules.

9. For the aforesaid reasons, we hold that, on the facts and in the circumstances of the case, the question of law framed in this appeal has to be answered against the Revenue. We do so. Resultantly this appeal fails.

10. We find that the decision of the Kolkata Tribunal is on the very same product and the High Court judgement deals with by-product emanating the course of the manufacture of the finished goods. The ratio of these case laws is squarely applicable to the facts of the present appeal. Therefore, we set aside the impugned order and allow the appeal on merits.

11. We also find enough force in the arguments of the Ld Senior Counsel on account of time bar. The appellant is a reputed Public

Sector Undertaking. They have proportionately reversed the cenvat credit in respect of the by-product, without taking the stand that no such reversal is required on account of the same not being a manufactured exempted goods. All their transactions have been properly recorded in the Cenvat records and the ER 1 Returns. Therefore, we hold that the Revenue has failed to make out any case of suppression with an intent to evade on the part of the appellant. Hence, we set aside the confirmed demand pertaining to the extended period on account to time-bar also.

12. The appeal stands allowed thus. The appellant would be eligible for consequential relief, as per law.

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

Sd/
(RAJEEV TANDON)
MEMBER (TECHNICAL)

Sd/
(R. MURALIDHAR)
MEMBER (JUDICIAL)

sm