

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

REGIONAL BENCH – COURT NO.2

Excise Appeal No. 77035 of 2016

(Arising out of Order-in-Original No. 05-06/COMMR/DGP/15 dated 11.03.2015 passed by Commissioner of CGST & Central Excise, Durgapur.)

M/s Surya Alloy Industries Ltd.,

(Barjora, Maliara Road, Vill.- Ghutgoria,
Dist.- Bankura-722202).

...Appellant

VERSUS

Commissioner of CGST & Central Excise, Durgapur,

(Satyajit Ray Sarani, City Centre, Durgapur-713212)

...Respondent

..

APPEARANCE :

Shri N. K. Choudhary, Advocate for the Appellant

Shri S. K. Singh, Authorized Representative for the Respondent

CORAM:

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

HON'BLE MR. RAJEEV TANDON, MEMBER (TECHNICAL)

FINAL ORDER No...76932/2025

DATE OF HEARING : 11.07.2025

DATE OF DECISION : 11.07.2025

PER R. Muralidhar :

The appellant has taken credit of various items like plates, coils, angles, channels, joists, beam electrodes etc. during the period January 2008 to June 2013. Two Show Cause notices were issued. The first Show Cause Notice was issued for the period January 2008 to November 2012 on 29-01-2013. Second Show Cause Notice was issued for the period January 2012 to June 2013 on 6.12.2013. On the ground that these items are not eligible for CENVAT Credit and citing the case law of Vandana Global, the demand was raised on the appellant. During the period April 2011 to May 2011, the appellant also has claimed CENVAT Credit on excavator. The CENVAT Credit taken on the

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excavator was also part of the first Show Cause Notice dated 29.01.2013.

2. The appellant submitted that the goods in question have been used in the manufacture of capital goods and to this effect they have submitted the Chartered Engineer's Certificate issued by S. Anirban Chatterjee Chartered Engineer on 29.04.2013. They also cited various case laws wherein it has been held that the decision arrived at in the Vandana Global is not correct and CENVAT Credit is eligible for the inputs and capital goods used in the finish in the manufacture of capital goods and in the usage of structural supporting the capital goods. They also agitated the first Show Cause Notice on the ground of time bar. Adjudicating authority after due process confirmed the demands. Being aggrieved, the appellant is before the Tribunal. After the process the demands were confirmed. The appellant is before the Tribunal being aggrieved by the impugned order.

3. The Learned Counsel appearing on behalf of the appellant submits that the appellant had submitted the copy of the Chartered Engineer's Certificate very clearly showing quantity of each and every item in question being used in the manufacture of various capital goods. He submits that this was not at all considered by the adjudicating authority. He further relies on various case laws wherein it has been held that the inputs used in the manufacture of capital goods are eligible for CENVAT Credit. He submits that the Vandana Global case has been overturned by the Chhattisgarh High Court as reported at 2018-(16) GSTL (462) (Chhattisgarh).

4. In view of the above submissions, he prays that the appeal may be allowed on merits.

5. He also takes the stand that since all the CENVAT Credit taken in case of inputs and capital goods were reflected in the ER-1 Returns. Therefore, there is no suppression on the part of the appellant. Apart from that, he relies on various case laws wherein it is held that when the Show Cause Notice and adjudication proceedings have been taken up based on the Vandana Global, the issue is that of interpretation. Accordingly, the extended period provisions will not apply. Therefore, he submits that the demand confirmed for the extended period may be set aside on account of time bar also.

6. The Learned AR reiterates the findings of the lower authorities and justifies the confirmed demand. He relies on the case law of CCE Pune JCP India Ltd-2014-312-ELT-593-Tri-Mumbai wherein it has been held that the excavators are properly classifiable under Motor Vehicles and accordingly no CENVAT Credit can be taken by the appellant. Therefore, he submits that the appellant is not eligible to take the CENVAT Credit on excavators. In the rejoinder, the learned counsel appearing on account on behalf of the appellant submits a case law of **Steel Authority of India Ltd versus CSE Bolpur-2024-16 Centax-455 Tri-Calcutta** wherein the items used in respect of capital goods have been held as eligible for CENVAT Credit.

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7. Heard both sides and perused the appeal papers and the submissions made by both the sides.

8. We find that the issue as to whether angles, channels, joists, beams etc. used in the manufacture of the fabrication of machinery was under litigation for quite some time in view of the larger institution of the Vandana Global. Subsequently, the Chhattisgarh High Court has set aside the order of the Larger Bench in the case of Vandana Global. This Bench in the case of Steel Authority of India Ltd cited Supra has held that the items which are used in the manufacture of capital goods are eligible for CENVAT Credit. Also, find from the factual records we find that the appellant has submitted a very detailed certificate issued by the chartered engineer. The relevant portion of the chartered engineer's certificate is extracted below.

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CHARTERED ENGINEER
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Ref No.: C&A/SAIL/13-14/01
Date: 29.04.13

VALUATION REPORT

VALUATION OF STEEL CONSUMED IN MANUFACTURING, ERECTION AND
INSTALLATION OF MACHINERIES, EQUIPMENTS IN PHASE-III EXPANSION OF
SURYA ALLOY INDUSTRIES LIMITED, BARJORA, BANKURA.

PREAMBLE:

In pursuant to the request from M/s. Surya Alloy Industries Limited, Barjora, Bankura, the inspection of Phase - III of the Ferro Alloys plant was conducted on 25.04.13 and 26.04.13. The purpose of inspection was to assess independently the total steel consumed in manufacturing, erection and installation of machineries and equipments in Phase -III Expansion of the Ferro Alloys Plant, located in the same premises.

PRODUCTION PROCESS LINE:

The production process line covered under Phase -I is the SMS Division. The mother production unit is a 7.0 MT Induction Furnace for production of MS Ingot. The downstream process lines comprised of 2 Nos. of Rolling strands. From one strand MS Angle and Channel up to 150 mm size is produced. From the other strand railway ERC Clips and Fishplates are produced.

The Continuous Casting Plant is covered under Phase -II. The steel for the process line is produced from a 25 MT Arc Furnace. The refining of the steel is done through the refining unit comprising of 1 No. Ladle Refining unit and 1 No. Vacuum Degassing unit.

After refining, the molten steel is taken to Continuous Casting Machine for further processing. The final product rolled out from this unit is MS Billet.

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The Phase -III was commissioned in 2011, a new unit for production of Ferro Alloys.

OBSERVATION:

The Phase-III of the Ferro Alloy Plant comprises of 2 Nos. of Sub-merged Arc Furnaces of 2050 MT/ per month capacity and 2 Nos. 9 MVA transformers for supply of power to the furnaces. Physical assessment of both the furnaces i.e. Furnace I and II of Phase -III of the Ferro Alloy Plant was carried out to assess the quantity of steel used in form of plates, channels, angles, beams, flats etc. Photograph No. 1, 2 and 3, exhibits the Furnaces. The furnace and all its accessories were fabricated at site. Steel plates mainly 20 mm or 25 mm as required, channels, angles, beams, flats etc. in huge quantity are used. Large amount of steel plates were required for fabrication of the shell, sides and top of furnace hood, Mantles for cooling and covering the electrodes carrying current to the furnaces, fume extraction system, raw material charging system etc.

During further coarse of inspection to assess the quantity steel used for Raw material storage hopper at feeding point to feeders, EOT crane stool guide and gantry, air pollution equipment Bag filter equipment, Pollution control equipments, tapping equipment of molten metal, bucket elevator for carrying hydrated Lime to Lime storage hopper of Briquetting plant, Belt conveyor of Briquetting plant for carrying ores, hoppers and conveyor system for Zigging plant. was carried out and photographs were taken. Photograph No. 4, 5 and 6, 7 and 8 exhibit the same.

Also a large amount of plates, channels, angles, beams of various sizes were required for fabrication of miscellaneous items like platform of Transformer, Charging chute, water pipeline for furnace cooling etc. Assessment of quantity steel used for these fabrications was also required to be carried out as part of the assignment.

Moreover steel was also used for erection of various sheds of Phase -III of the Ferro Alloy plant like Coke shed, Plant covering shed, Metal breaking yard, tapping bay shed, Briquetting shed etc. Photograph No. 9 exhibits the same.

Detailed assessment of quantity of Plates, Channels, angles, beams, flats, rounds and square bars are given below.

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ASSESSMENT OF STEEL CONSUMED IN PHASE-III IS AS FOLLOWS:

CONSUMPTION OF PLATES

A) SUBMERGED ARC FURNACE - I

SL. NO.	DESCRIPTION	QUANTITY (MT)
1	Submerged Arc Furnace Shell (SAF)	115.500
2	Electrode Hydraulic Travel Equipment of the SAF	25.250
3	Furnace Hood - Side & Top	59.500
4	Hood Hangers	4.300
5	Demagnetic Shield of copper tube of the SAF	15.900
6	Mantle-1 for cooling and covering of the Electrode carrying current to Furnace	31.000
7	Mantle-2 for cooling and covering of the Electrode carrying current to Furnace	30.300
8	Mantle-3 for cooling and covering of the Electrode carrying current to Furnace	30.500
9	Smoke Seal system -1	12.520
10	Smoke Seal system -2	12.520
11	Slipping Mechanism of furnace Electrode	25.250
12	Fumes Extraction System	110.120
13	Raw material Charging System to Furnace	79.500
14	Furnace Electric Power Circuit system	5.500
15	Forma of carbon Paste Lining of Furnace Shell	10.200
16	Furnace water cooling Tank	19.280
17	Star Beam for hydraulic hanging system	8.600
18	Furnace & Its Accessories Hanging Stool	95.400
19	Electrode Casings (39 Nos.)	11.550
	Total	702.690

B) SUBMERGED ARC FURNACE - II

SL. NO.	DESCRIPTION	QUANTITY (MT)
1	Submerged Arc Furnace Shell (SAF)	115.500
2	Electrode Hydraulic Travel Equipment of the SAF	25.250
3	Furnace Hood - Side & Top	59.500
4	Hood Hangers	4.300
5	Demagnetic Shield of copper tube of the SAF	15.900

9. Considering the factual details and the cited case law of SAIL decided by this Bench, we hold that the demand is not sustainable on

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merits in respect of all the items covered under the Show Cause Notice 1 and Show Cause Notice 2 except for excavators which are covered under Show Cause Notice 1. In the case of excavators, we find merits in the arguments of the AR and hold that the appellant is not eligible to take the CENVAT Credit.

10. However, we find that for the CENVAT Credit taken in January 2011 and April 2011, the Show Cause Notice has been issued in 2013, though the fact of taking the CENVAT Credit has been reflected by the appellant in the RG23C records and ER1 records for the month of January and April 2011. Therefore, on account of time bar, we hold that the confirmed demand on excavators also does not survive.

11. In view of the foregoing, the appeal is allowed along with consequentiality if any as per law.

(Dictated and pronounced in the open court)

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

Sd/-
(Rajeev Tandon)
Member (Technical)

Tushar Kr.