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

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76432 of 2017

(Arising out of Order-in-Appeal No.DGR-EXCUS-000-COM-030-16-17 dated 07.03.2017 passed by Commissioner of Customs, Central Excise & Service Tax, Durgapur Commissionerate)

M/s Steel Authority of India Limited,

(Durgapur Steel Plant, Durgapur-713 203, West Bengal)

Appellant

VERSUS

Commr. of CGST & Central Excise, Durgapur

(Durgapur Commissionerate, Durgapur- 713 216, West Bengal)

Respondent

APPEARANCE

Dr.Samir Chakraborty, Sr.Advocate & Mr.Abhijit Biswas. Advocate,
Both for the Appellant
Mr. S.K.Jha, Authorized Representative for the Revenue

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

FINAL ORDER NO. -76949/2025

Date of Hearing : 03.07.2025
Date of Decision : 03.07.2025

Per : R. MURALIDHAR :

The appellant has taken cenvat credit of Rs.68425698/- during the period April 2002 to September 2014. Periodical Show Cause Notices were given on the ground that they were not eligible to take this credit. After due process, the matter reached Tribunal. Vide Final Order No.75390-75393 of 2025 dated 05.02.2025, the Tribunal held that the appellant is eligible for cenvat credit. For the period March 2011 to March 2013, some more Show Cause Notices was issued on the ground that the appellant has taken cenvat credit to the extent of Rs. 11,58,82,953/-. After due process, the Adjudicating Authority confirmed the demand. Even as the appeal was pending before the Tribunal, the appellant opted for SVLDRS Scheme and the SVLDRS Certificate-4 was issued by the Department. Noting the same, vide Final Order No.75452 of 2021 dated 31.07.2021, the appeal filed by the appellant was dismissed. In the meanwhile, even as the litigation was going on towards the cenvat credit taken, the Department had issued another Show Cause Notice on the ground that as the cenvat credit was not available but still the same was taken and utilized, the appellant is required to pay Excise Duty of Rs.4,68,05,778/-. After due process vide OIO No.DGR-EXCUS-000-COM-030-16-17 dated 07.03.2017, the Adjudicating Authority confirmed the demand of Rs.4,68,05,778/-. along with equal amount of penalty. Being aggrieved, the appellant is before the Tribunal.

2. The learned Sr.Counsel submits that the first issue has already been decided in favor of the appellant holding that the appellant is eligible for cenvat credit of Rs.6,84,25,698/- by this Tribunal. Therefore, on this ground itself, the impugned order is required to be set aside. He further submits that the second issue pertaining to cenvat credit of Rs. 11,58,82,953/-, stands settled under SVLDRS Scheme. He takes us through to Finance No.2 Act of 2019 Clause 129(1)(c) wherein it is stated that no other proceedings would survive when the asseesee opts for this scheme. In view of the above submissions he prays that the appeal may be allowed.

3. The learned AR reiterates the detailed findings of the Adjudicating Authority. He submits that the appellant has taken cenvat which is not eligible to them. In one case the appellant by opting for SVLDR Scheme, has admitted that they were not eligible for cenvat credit. Therefore, he justifies the confirmed demand.

4. Heard both sides. Perused the appeal papers and all the submissions made by both the sides.

5. We find that the appellant was issued Show Cause Notices on the ground that they were not eligible to take cenvat credit. The first proceeding on account of cenvat credit of Rs.6,84,25,698/- reached the Tribunal level wherein this Bench vide Final Order No.75390-75393 of 2025 dated 05.02.2025 has allowed the appeal filled by the appellant. Therefore, as on date, the cenvat credit taken by the appellant to the extent of Rs. 6,84,25,698/- is held as legal. Therefore, we find that there could be no illegality in utilizing this cenvat credit by the appellant. Coming to the second cenvat credit of Rs. 11,58,82,953/-admittedly the appellant has opted for SVLDRS Scheme which has been approved by the Revenue by issuing them SVLDRS Certificate-4. This was quoted by this Bench in its Final Order No.75453 of 2021 dated 30.07.2021 while dismissing the appeal filled by the appellant.

6. We also note that the very fact that the appellant has opted for SVLDRS Scheme conveys the message that the appellant was aware that they were not eligible for cenvat credit. However, we also have to take a look at clause 129(1)(c) of Finance No.2 Act of 2019 which is reproduced below:

> *"129. (1) Every discharge certificate issued under section 126 with respect to the amount payable under this Scheme shall be conclusive as to the matter and time period stated therein, and-*
>
> *(a) the declarant shall not be liable to pay any further duty, interest, or penalty with respect to the matter and time period covered in the declaration;*
>
> *(b) the declarant shall not be liable to be prosecuted under the indirect tax enactment with respect to the matter and time period covered in the declaration;*
>
> *(c) no matter and time period covered by such declaration shall be reopened in any other proceeding under the indirect tax enactment."*

7. From the above facts, we see that once the asseesee opts for this Scheme in terms of clause 129(1)(c) it is stated that " **no matter and time period covered by such declaration shall be reopened in any other proceedings under the indirect tax enactment**". Therefore, we find that in terms of clause 129(1)(c) of the Finance (No.2) Act 2019, the issue cannot be reopened.

8. Considering these details, we set aside the impugned order and allow the appeal filed by the appellant. The appellant would be eligible for consequential relief, if any, as per law.

(Dictated and pronounced in the open Court.)

Sd/-
(Rajeev Tandon)
Member (Technical)

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

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