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

REGIONAL BENCH – COURT NO.1

Excise Appeal No.75314 of 2018

(Arising out of Order-in-Appeal No.10/CE/BBSR-GST/2017 dated 31.10.2017 passed by Commissioner (Appeals) of CGST & Central Excise, Bhubaneswar)

M/s Jindal Stainless Ltd.
(Kalinga Nagar Industrial Complex, PO-Danagdi, Dist.-Jajpur-755026)

Appellant

VERSUS

Commissioner of CGST & Central Excise, Bhubaneswar
(C.R.Building, Rajaswa Vihar, Bhubaneswar-7, Odisha)

Respondent

APPERANCE :

Shri Jnanesh Mohanty & Ms.Shreya Mundhra, both Advocates for the Appellant
Shri P.Das, Authorized Representative for the Respondent

CORAM:
HON'BLE MR.ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR.K.ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO.77334/2025

DATE OF HEARING : 19 AUGUST 2025
DATE OF DECISION : 19 AUGUST 2025

Per Ashok Jindal :

The appellant is in appeal against the impugned order.

2. The facts of the case are that the appellant is engaged in manufacture of Stainless Steel falling under Chapter 72 of the Central Excise Tariff Act, 1985 (for short CETA). During the first phase of commissioning of the plant in the year 2005, Ferro Alloys Plant and Captive Power Plant started operation and Ferro Alloys was manufactured in the factory as the final product and removed on payment of Central Excise Duty.

2.1 The manufacture of Stainless Steel commenced in the month of June, 2011 and the facilities for manufacture of stainless steel i.e. Steel Melting Shop (SMS), Hot Rolling Mill (HRM) and Cold Rolling Mill (CRM) were also commissioned in June, 2011.

2.2 During the Second Phase expansion of the plant, the appellant decided to obtain Special Economic Zone (SEZ status). The total area of the plant was 1240 Acres, out of which 351.18 Acres was notified as SEZ area, vide Notification No.1472 dt.28.11.2007 by the Ministry of Commerce & Industries, Govt. of India.

2.3 Similarly, on 29.11.2007 and 03.11.2008, the appellant filed application for Additional 500 acres (494.44 Acres to be precise), to be notified as SEZ Area. However, the application for additional 500 acre was never considered by the competent authority, and thus out oftotal 1240 acres, 880.82 acres, remained as Domestic Tariff Area (DTA) where the final product manufactured was Ferro Alloys.

2.4 While the matter stood thus, audit was conducted by the CERA on 16.10.2009.The audit revealed that during the period under dispute i.e. May, 2008 to March, 2009, the assessee had availed input service credit related to its SEZ area and therefore, the said credit as per Rule 2(l) of the CENVAT Credit Rules, was not available to the appellant. The audit placed reliance on 6 nos. of invoices, issued by the service provider, M/s. M. M. Nayak, Jajpur Road.

2.5 Based on the Audit Para dt.16.10.2009, a Show Cause Notice dt.07.03.2013 was issued by the Addl. Commissioner, Central Excise , Customs & Service Tax, Bhubaneswar-I. The said Show Cause Notice was issued after a lapse of more than 3 years and 4 months from the date of Audit, invoking the extended period of limitation.

2.6 The allegation made in the Show Cause Notice was that the noticee have wrongly taken and utilized cenvat credit on input service to the tune of Rs.30,31,889.00 relating to the period May, 2008 to March, 2009. According to the Department, the said services relate to the SEZ area, having no nexus to manufacture of finished product.

2.7 A reply was filed by the appellant to the said Show Cause Notice on 23.07.2013. It was explained by the appellant that the input services were received in the non-SEZ/DTA area, and that 6 nos. of disputed invoices, raised by the service provider M/s. M M Nayak, have been accounted for in the books of accounts maintained for the DTA portion of the plant premises, where the services have actually been performed. In support of its above contention, the appellant had enclosed the Certificate issued by the Chartered Accountant, M/s. GRC and Associates. It was also contended by the appellant that the show cause notice was barred by limitation.

Without taking into consideration the submission made by the appellant, the adjudicating authority, vide OIO dt.26.08.2013 has confirmed the demand along with interest and penalty under the provisions of the Central Excise Act.

2.8 Being aggrieved by the aforesaid order, the appellant had filed an appeal before the learned Commissioner (Appeals) on various grounds. The appeal was posted for hearing on 27.07.2016. During the course of hearing, the appellant had filed a detailed written submission dt.27.07.2016, followed by a brief note dt.02.08.2016, containing the sequence of activities relating to SEZ area. However, the learned Commissioner (Appeals) did not pass any order. Therefore, the appellant was compelled to file a additional submission on 16.10.2017, reiterating the grounds already urged in the appeal. After a lapse of more than 15 months from the date of hearing, the Order in Appeal dt.31.10.2017 was passed by the learned Commissioner (Appeals). Being aggrieved the present appeal has been filed.

3. Heard both the parties and considered the submissions.

4. We find that in this case, the period involved is May, 2008 to March, 2009 and an Audit was conducted by CERA on 16.10.2009 and as per the Audit Report, the appellant availed input service credit, which related to SEZ area. Thus, the credit was found to be inadmissible. But the show-cause notice has been issued to the appellant on 07.03.2013 by invoking extended period of limitation. These facts are not in dispute.

5. In view of this, we hold that as the availment of cenvat credit is inadmissible, the cenvat credit was in the knowledge of the Revenue on 16.10.2009. Therefore, the show-cause notice issued on 07.03.2013 for the period May, 2008 to March, 2009, is barred by limitation. Accordingly, the appellant succeeds on limitation. Therefore, we are not going into the merits of the case.

6. In these terms, the appeal is allowed.

(Operative part of the order was pronounced in the open court)

(Ashok Jindal)
Member (Judicial)

(K.Anpazhakan)
Member (Technical)

mm