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

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 76529 of 2019

(Arising out of Order-in-Appeal No. 435/BOL-CE/2018-19 dated 01.03.2019 passed by the Commissioner of C.G.S.T. & Central Excise, Siliguri Appeals Commissionerate, Haren Mukherjee road, Hakimpara, Siliguri – 734 001)

M/s. Gagan Ferrotech Limited **: Appellant**
[Under E.A.3 as 'M/s. Ganan Ferrotech Limited']
Jamuria Industrial Estate, Vill. & Post: Ikra,
Burdwan

VERSUS

Commissioner of C.G.S.T. and Central Excise **: Respondent**
Siliguri Commissionerate,
C.R. Building, Haren Mukherjee Road, Hakimpara,
Siliguri – 734 001

APPEARANCE:

Shri N.K. Chowdhury, Advocate, for the Appellant

Shri D. Sue, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77401 / 2025

DATE OF HEARING / DECISION: 10.09.2025

ORDER:

The present appeal has been filed against the Order-in-Appeal No. 435/BOL-CE/2018-19 dated 01.03.2019 passed by the Ld. Commissioner of C.G.S.T. & Central Excise, Siliguri Appeals Commissionerate, Haren Mukherjee road, Hakimpara, Siliguri – 734 001.

2. M/s. Gagan Ferrotech Limited, Jamuria Industrial Estate, Vill. & Post: Ikra,Burdwan (hereinafter referred to as the "appellant") are engaged in the manufacture and clearance of excisable goods namely, Sponge Iron, Ingot, Billet,

TMT Bar and HR Coil, falling under Chapter 72 of the First Schedule to the Central Excise Tariff Act, 1985.The appellant was also procuring inputs / capital goods and also availing credit of duty paid on such goods.

2.1. During the course of verification of statutory records and documents by CERA Audit,a view was taken that the appellant had reversed CENVAT Credit on inputs and capital goods cleared “as such”, but had not reversed the amount of Service Tax credit on procurement of these inputs / capital goods.

3. On the basis of the above objection, a Show Cause Notice dated 02.05.2016 was issued demanding reversal of CENVAT Credit of Rs.14,47,994/- in terms of Rule 14 of the CENVAT Credit Rules, 2004. The Notice also proposed recovery of interest and imposition of penalties thereon.

4. Upon adjudication, the Ld. Assistant Commissioner of Central Goods and Service Tax, Asansol-II Division confirmed the proposal for reversal of CENVAT Credit, along with interest and penalty, vide Order-in-Original dated 13.12.2017.

5. On appeal, the Ld. Commissioner of C.G.S.T. & Central Excise, Siliguri Appeals Commissionerate rejected the appeal filed by the appellant vide the impugned Order-in-Appeal dated 01.03.2019.

5.1. Aggrieved by the impugned order, the appellant has filed this appeal.

6. The Ld. Counsel appearing on behalf of the appellant submits that the issue is no longer res integra as identical issue has already been decided by various Tribunals in favour of the appellants wherein it has been categorically held that there is no need to reverse Service Tax credit availed on transportation of inputs and capital goods which were cleared "as such". It is his submission that in terms of Rule 3(5) of the CENVAT Credit Rules, 2004, the appellant was only required to reverse the input tax credit availed on the said inputs and capital goods at the time of their clearance; Rule 3(5) does not envisage reversal of credit availed in respect of transportation of the inputs / capital goods.

6.1. In support of the above contention, the Ld. Counsel for the appellant has cited the decision of the Tribunal in the case of *Shyam Ferro Alloys Ltd. v. Commissioner of C.G.S.T. &C.Ex., Durgapur [Final Order No. 76891 of 2024 dated 03.07.2025 in Excise Appeal No. 76575 of 2016 – CESTAT, Kolkata]*. Reliance has also been placed on the decision of CESTAT, Chennai in the case of *Chitrakoot Steel & Power Pvt. Ltd. v. Commissioner of C.Ex., Chennai [2008 (10) S.T.R. 118 (Tri. – Chennai)]* wherein the same issue has been addressed by this Tribunal. In view of these submissions, the appellant prays for setting aside the impugned order and allowing their appeal.

7. On the other hand, the Ld. Authorized Representative of the Revenue reiterates the findings in the impugned order.

8. Heard both sides and perused the appeal records.

9. I find that in the instant case, the appellant has cleared certain inputs and capital goods "as such". As per Rule 3(5) of the CENVAT Credit Rules, 2004, the appellant has reversed the credit availed on the said inputs and capital goods at the time of clearance "as such". The contention of the Revenue is that along with the reversal of the above said credit, the appellant was also required to reverse the CENVAT Credit taken on transportation of the inputs and capital goods.

9.1. I find that Rule 3(5) of the CENVAT Credit Rules only envisages reversal of CENVAT Credit availed on inputs and capital goods when the same are cleared "as such". The said Rule does not envisage reversal of credit availed on transportation of such inputs or capital goods. I find that the said issue is no longer res integra as this Tribunal has held the same view in the case of *Shyam Ferro Alloys Ltd. v. Commissioner of C.G.S.T. & C.Ex., Durgapur [Final Order No. 76891 of 2024 dated 03.07.2025 in Excise Appeal No. 76575 of 2016 – CESTAT, Kolkata]* wherein it has been observed as under: -

> *"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.*
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> *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:*
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> > *On a careful study or 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 & Hariyana 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. 113 (Tri-Chennai.)*
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> *"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 pad 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 pad 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 Cevat 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 Canvat 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 plan 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."

9.2. Thus, by following the ratio of the decision cited above, I am of the view that the appellant is not liable to reverse the CENVAT Credit availed on transportation of inputs and capital goods while reversing the CENVAT Credit on clearance of the said inputs and capital goods "as such". Thus, I hold that the demand confirmed in the impugned order is not sustainable and accordingly, the same is set aside.

9.3. As the demand of reversal of credit does not survive, the question of demanding interest and imposing penalties thereon does not arise. Accordingly, the same are also set aside.

10. In the result, I set aside the demand confirmed in the impugned order, along with interest and penalty, and allow the appeal, with consequential relief, if any, as per law.

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

Sd/-

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd