IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, WEST ZONAL BENCH AT MUMBAI

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 88205 of 2018

(Arising out of Order-in-Appeal No. NGP-1/APPL/111/2017-18 dated 09.04.2018 passed by Commissioner of CGST & Central Excise, Nagpur)

M/s Bhaurao Chavan SSK Ltd. **Appellant**
Unit-II, Dongarkada, Tal.Kalamnuri, Dist.Hingoli

VERSUS

Commissioner of Central Excise & Service Tax, Aurangabad **Respondent**
N-5, Town Centre, CIDCO, Aurangabad, Maharashtra 431030

Appearance:

Shri J.N. Sommaiyya, Advocate for the Appellant
Ms. Anuradha Parab, Authorized Representative for the Respondent

CORAM: Hon'ble Mr. S.K. Mohanty, Member (Judicial)

FINAL ORDER NO. A/85737 / 2019

Date of Hearing: 27.03.2019
Date of Decision: 27.03.2019

Per: S.K. MOHANTY

Brief facts of the case are that the appellant is engaged in the manufacture of sugar and molasses, falling under Chapter Sub-heading no. 17011490 and 17031000 respectively of the Central Excise Tariff Act, 1985. The appellant avails Cenvat Credit of central excise duty paid on inputs and capital goods and service tax on the input services. During the disputed period, the appellant had availed Cenvat Credit on structural items namely, M.S. Angle, M.S. Plates, M.S. Channel, M.S. Pipe & Forged Steel etc., considering the same as capital goods.

Taking of Cenvat Credit was disputed by the department on the ground that those goods cannot be considered as capital goods in terms of the definition provided under Rule 2(a)(A) of the Cenvat Credit Rules, 2004. Accordingly, show cause proceedings were initiated against the appellant, seeking for denial of the Cenvat Credit. The matter was adjudicated against the appellant vide order dated 26.02.2016, wherein Cenvat Credit amounting to Rs. 75,372/- was disallowed and the appellant was directed to pay interest on the irregularly availed Cenvat Credit. Further, the adjudication order also imposed equal amount of penalty under Rule (15)(2) of the Rules read with Section 11AC of the Central Excise Act, 1944. On appeal against the adjudication order, the Learned Commissioner (Appeals) vide the impugned order dated 09.04.2018 has upheld the adjudged demand confirmed on the appellant.

2. The Learned Advocate appearing for the appellant submits that the disputed goods were used by the appellant for repair/maintenance of various sugar manufacturing, machines such as, return bagasse carrier, cane carrier, juice carrier, rack carrier etc., which are considered as eligible capital goods in terms of the definition provided under Rule 2(a)(A) of the Rules. Thus, he submits that since the main machines/machineries were classified under Chapter 84 of CETA, 1985, the disputed goods should be considered as components, parts or accessories of the machines of such specified chapter. In this context, the Learned Advocate has relied upon the certificate produced by the Chief Engineer of the appellant’s manufacturing unit, certifying uses of the disputed goods in the respective machines. He further submits that the appellant had maintained records to demonstrate that disputed goods were in fact used as components, spares and accessories of the machines falling under Chapter 84 of the CETA, 1985. Accordingly, it is prayed

on behalf of the appellant for remanding the matter to the original authority, for submission of necessary documents to demonstrate that the goods in dispute have been used for the machines falling under Chapter 84 of the CETA.

3. On the other hand, the Learned DR appearing for Revenue reiterates the findings recorded in the impugned order. She further submits that since the appellant had not produced any certificate from an independent Chartered Engineer, the certificate furnished by the Chief Engineer, who is an employee of the appellant company, cannot be considered as proper and valid for allowing the Cenvat benefit on the disputed goods.

4. Heard both sides and perused the records.

5. I find that the certificate furnished by the Chief Engineer of the appellant company, certifying uses of the disputed goods in the factory premises was rejected by the Learned Commissioner (Appeals) on the ground that he is an employee of the appellant company and thus, his certificate cannot be taken into cognizance for deciding the issue regarding eligibility of Cenvat Credit on the disputed goods. Considering the submissions of the Learned Advocate that the appellant is in a position to submit the document/records to show the actual use of the disputed goods in the factory premises for intended purpose, I am of the view that the matter should go back to the original authority for a proper fact finding on the basis of the documents to be produced by the appellant that the disputed goods are in fact spares, components and accessories of the machines of Chapter 84 of the CETA, 1985. If the appellant is able to demonstrate that the disputed goods were actually used in the machines and machineries of the eligible chapter, the Cenvat benefit should be extended by the original authority.

6. In the result, after setting aside the impugned order, the appeal is allowed by way of remand to the original authority for deciding the matter in line with the above observations. Needless to say, that opportunity of hearing should be granted to the appellant before deciding the issue afresh.

(Dictated and pronounced in the open court)

(S.K. Mohanty)
Member (Judicial)

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