CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL MUMBAI

REGIONAL BENCH

EXCISE APPEAL NO: 998 OF 2012

[Arising out of Order-in-Appeal No: BC/404/M-III/2011-12 dated 30th March 2012 passed by the Commissioner of Central Excise (Appeals), Mumbai – III.]

Fitwell Engineering Company
2nd Pokhran Road, Opp: Oswal Park, Thane - 400601 ...***Appellant***

versus

Commissioner of Central Excise
Mumbai – III
Vardaan Centre, MIDC, Wagle Industrial Estate
Thane (West), Mumbai - 400604 ***...Respondent***

APPEARANCE:

Shri H.G. Dharmadhikari, Advocate for the appellant

Shri N.N. Prabhudesai, Superintendent (AR) for the respondent

CORAM:

HON'BLE MR ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE MR C J MATHEW, MEMBER (TECHNICAL)

FINAL ORDER NO: A/ 87272 /2021

DATE OF HEARING: 01/12/2021
DATE OF DECISION: 01/12/2021

PER: ASHOK JINDAL

The appellant is in appeal against the impugned order wherein CENVAT credit has been denied to them.

2. The facts of the case are that the appellant is engaged in execution of turn-key projects at Chennai and having their factory at Thane. The appellant procured certain inputs which were directly sent to the site and the invoices were received at Thane factory. Thereafter, the appellant issued invoices on value addition of the said goods and cleared the same on payment of duty. The case of the department is that the appellant has not received the goods at the factory premises, therefore, they are not entitled to take CENVAT credit. In these set of facts, the show cause notice was issued and held that the appellant is not entitled to take CENVAT credit. Aggrieved by the said order the appellant is before us.

3. Shri H.G. Dharmadhikari, Learned Counsel for the appellant appeared and submitted that all these inputs were sent to the site directly but they have taken CENVAT credit at the factory and the same are cleared on payment of higher duty. Therefore, if they are not entitled to take CENVAT credit, then they are not required to pay duty also. Therefore, he prays that, therefore the duty paid by them be treated as reversal of CENVAT credit on inputs which were not received in the factory. He also relied on the decision of the *Commissioner of Central Excise, Pune - III v. Ajinkya Enterprises [2013 (294) ELT 203 (Bom)].*

4. On the other hand, Learned Authorised Representative

reiterates the findings in the impugned order.

5. Heard the parties and considered the submissions.

6. It is not in dispute by both the parties that the goods on which, the appellant has taken CENVAT credit have been cleared on payment of higher duty. In that circumstances, we hold that the payment of duty shall amount to reversal of credit on the goods in question as held by the Hon'ble High Court of Bombay in *Ajinkya Enterprises (supra).* Therefore, the demand is not sustainable.

7. In view of the above, we set aside the impugned order and allow the appeal with consequential relief, if any.

(Pronounced in Court)

(C J Mathew)
Member (Technical)

(Ashok Jindal)
Member (Judicial)

**/as*