CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI

REGIONAL BENCH - COURT NO. I

Excise Appeal No. 1112 of 2012

(Arising out of Order-in-Appeal No. BC/01/BEL/2012-13 dated 19.04.2012 passed by the Commissioner of Central Excise (Appeals), Mumbai-III)

M/s MUKAND LTD. **.... Appellant**
Belapur Road, Dighe, Kalwe, Thane – 400605

Versus

Commissioner of Central Excise, Belapur **.... Respondent**
1st Floor, CGO Complex, CBD Belapur,
Navi Mumbai – 400614

Appearance:

Shri Ganesh Kumar, Advocate for the Appellant

Shri Sanjay Hasija, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. S.K. MOHANTY, MEMBER (JUDICIAL)
HON'BLE MR. P. ANJANI KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. A/85717 / 2022

Date of Hearing: 21.04.2022

Date of Decision: 21.04.2022

Per: S.K. MOHANTY

This appeal is directed against the impugned order dated 19.04.2012 passed by the learned Commissioner (Appeals), Mumbai-III.

2. Briefly stated the facts of the case are that the appellant herein M/s Mukand Ltd. during disputed period had purchased materials namely, M.S. Angles, M.S. Channel, M.S. Beams, Plates, Parallel flange beams and availed CENVAT Credit of

Central Excise duty paid thereon, treating the same as capital goods. Availment of CENVAT Credit by the appellant was disputed by the Department holding that the same cannot be termed as capital goods inasmuch as those disputed goods were used as raw materials for civil work. The show-cause notice issued in this regard was adjudicated vide Order dated 23.12.2011, wherein Central Excise duty demand of Rs.32,19,028/- and Rs.20,52,329/- was confirmed under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944. On appeal against the said adjudication order, learned Commissioner (Appeals) has rejected the appeal filed by the appellant and upheld the confirmation of adjudged demand on the appellants.

3. Shri Ganesh Kumar, learned Advocate appearing of the appellant submitted that on identical set of facts, this Tribunal vide Final Order No. A/91698-91699/2017 dated 29.12.2017 has remanded the matter to the original authority for consideration of the issue regarding installation/use of the disputed goods in the factory premises. Since on entirely set of facts, this Tribunal has remanded the matter back to the original authority for fresh consideration of the issue regarding consideration of the disputed goods as capital goods for the earlier period, we are of the view that the matter arising out of the present appeal should also be verified by the original authority.

4. Therefore, by setting aside the impugned order, the appeal is allowed by way of remand to the original authority. While

passing the *de novo* adjudication order, the original authority should consider the issue discussed and decided by the Tribunal vide Final Order dated 29.12.2017. Needless to say that reasonable opportunity of personal hearing should be granted to the appellant by the original authority before deciding the issue afresh.

5. In the result, the appeal is allowed by way of remand.

(Dictated and pronounced in open court)

(S.K. Mohanty)
Member (Judicial)

(P. Anjani Kumar)
Member (Technical)

Sinha