CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, MUMBAI
REGIONAL BENCH
COURT No. 5

Excise Appeal No. 85632 of 2021

(Arising out of Order-in-Appeal No. AJV/262/RGD APP/2020-21 dated 08.03.2021 passed by the Commissioner of Central Tax, Raigad)

Jayesh Industries Ltd. **Appellant**
W-103(D)-104(D)/1/2, MIDC,
TTC Industrial Area,
Thane Belapur Road,
Khairane, Navi Mumbai 400 705

Vs.

Commissioner of Central Excise, Belapur **Respondent**
CGO Complex, 1st Floor, Sector 10,
CBD Belapur, Navi Mumbai 400 614.

Appearance:

Shri Rajiv Luthia, Chartered Accountant, for the Appellant
Shri C.S. Vinod, Assistant Commissioner, Authorised Representative for Respondent

CORAM:

HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

Date of Hearing: 05.08.2024
Date of Decision: 22.08.2024

FINAL ORDER NO. 85792/2024

Brief facts of the case are that the appellant is manufacturer of goods falling under Chapter 81 and 72 of Schedule to Central Excise Tariff Act, 1985. They were availing facility of cenvat credit on inputs, capital goods and services received by them. During the course of audit conducted for the period from April 2014 to June 2017, it was observed by officers of Revenue that the appellant had availed inadmissible cenvat credit amounting to Rs.6,64,564/-. Therefore, the appellant was issued with a show cause notice dated 30.03.2019 proposing to deny the said cenvat credit under Rule 14 of Cenvat Credit Rules, 2004 with proposal to impose penalties and recover interest. The said show cause notice was adjudicated on contest through order-in-original dated 19.09.2020. The original authority upheld the allegations in the said show cause notice and disallowed the said credit and imposed penalties. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals) on the ground that substantive benefits cannot be denied on account of mere procedural lapses. However, the appellant did not succeed before learned Commissioner (Appeals). Aggrieved by the impugned order-in-appeal, appellant is before this Tribunal.

2. Heard the learned Chartered Accountant for the appellant. He has submitted that cenvat credit of Rs.26,445/- was denied on the ground that input service invoices did not have registration number of service provider. Further, cenvat credit of Rs.60,776/- was denied on the ground that the input invoices were having the address of administrative office of the appellant and not the address of factory of the appellant. He has further submitted that cenvat credit of Rs.4,68,680/- was denied on the ground that the said cenvat credit was availed against service tax paid on rent paid for the factory premises which was not included in the approved plan of the factory. He has further elaborated that the factory was under expansion and premises adjacent to the existing factory was taken on rent in the year 2001 and application was made for inclusion of the rented premises in the approved plan of factory in the year 2001. However, the approval was accorded in 2007 and the disputed cenvat credit of service tax paid on rent of the said additional premises was for the period prior to the year 2007 but subsequent to the year 2001. Learned CA has further submitted that cenvat credit of Rs.1,24,044/- was denied on various items used for repair and maintenance of machines such as MS angles, electrodes etc. He has argued that cenvat credit of Rs.26,445/- cannot be denied since there are no allegations that service tax was not paid by the service provider and that services were not received by the appellant. In respect of cenvat credit of Rs.60,776/-, learned CA has submitted that the issue is no more *res integra* and has been settled through various decisions of the Tribunal that if the invoices are bearing the address of administrative office, cenvat credit cannot be denied so long as there are no allegations that the goods and services were not received in the factory and duties and taxes were not paid on the same. Learned CA has further submitted that the service tax paid on rent was for the period after the application for inclusion

of additional premises in the approved plan of the factory was made in 2001 and, therefore, the same is admissible. In respect of various items used for repair and maintenance such as MS angles and electrodes, learned CA has submitted that there are various decisions including the decision of Hon'ble Supreme Court that goods required for maintenance, repair and upkeep of plant and machinery are inputs and cenvat credit on the same cannot be denied.

3. Heard the learned AR. Learned AR has submitted that Hon'ble Bombay High Court in the case of Manikgarh Cement vs. Commissioner of Customs & Central Excise, Nagpur reported at 2018 (360) ELT 86 (Bom.) has held that cenvat credit of central excise duty paid on electrodes is not admissible as cenvat credit. He has sought some time to submit a copy of the citation of the said case law.

4. At this stage, learned CA has sought permission to submit rejoinder to the submission of the said case law by Revenue.

5. On 5th August 2024, learned AR has submitted a synopsis enclosing a copy of citation reported at 2018 (360) ELT 86 (Bom.) which is a ruling by Hon'ble Bombay High Court in the case of Manikgarh Cement vs. Commissioner of Customs & Central Excise, Nagpur. Through the said decision it was held that cenvat credit of central excise duty paid on welding electrodes used for repair and maintenance of plant and machinery cannot be considered as input for availment of cenvat credit. On 8th August 2024, learned CA has submitted a rejoinder against synopsis dated 5th August 2024 submitted by Revenue. The said rejoinder enclosed a copy of citation as 2023 (12) TMI 1303 – Supreme Court which is titled as The Kisan Cooperative Sugar Factory Ltd. vs. Commissioner of Central Excise, Meerut-1. The said ruling was passed by Hon'ble Supreme Court wherein various civil appeals on the issues related to modvat and cenvat credit were decided together, including Civil Appeal No.6142 of 2010. As per citation 2018 (360) ELT A23 (SC), the petition filed by Manikgarh Cement challenging the ruling by Hon'ble Bombay High Court cited supra was tagged with Civil Appeal No.6142 of 2010. Through his

rejoinder, learned CA has submitted that Hon'ble Supreme Court through the said ruling reported at 2023 (12) TMI 1303 – Supreme Court, in para 20 has held that credit on items used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assessee and that credit on welding electrodes used for maintenance, repair, upkeep or fabrication of plant and machinery are admissible to the assessee.

6. I have carefully gone through the record of the case, submissions made by both sides, ruling by Hon'ble High Court in the case of Manikgarh Cement (supra) and ruling by Hon'ble Supreme Court in the case of The Kisan Cooperative Sugar Factory Ltd. I find that in respect of cenvat credit of Rs.26,445/- there are allegations that registration number of service provider is not available. I note that there are no allegations that the services provided through the said invoices were not received by the appellant nor there are allegations that the said services did not suffer service tax. I, therefore, hold that the appellant was eligible for cenvat credit of Rs.26,445/-. I further find that cenvat credit of Rs.60,776/- was denied to the appellant on the ground that the invoices were having the address of office and not that of factory. I note that there are plethora of judgments of this Tribunal and higher courts that on such ground, cenvat credit cannot be denied so long as there are no allegations that the services or the goods were not received in the factory and the goods and services did not suffer service tax or central excise duty, as the case may be. In the present case, I find that there are no allegations that the goods and services did not suffer tax or duty. Therefore, I hold that the appellant was eligible to avail cenvat credit of Rs.60,776/-. I further note that cenvat credit of Rs.4,68,680/- was availed of service tax paid on rent paid by the appellant after the year 2001 when they made application for inclusion of additional premises into the approved plan of the factory. I, therefore, hold that the appellant was eligible for cenvat credit of Rs.4,68,680/-. I further note that the disputed cenvat credit of Rs.1,24,044/- also involved service tax or central excise duty on MS angles and electrodes. I note that learned AR has relied on ruling by Hon'ble Bombay High Court in the case of Manikgarh Cement (supra) wherein in the

year 2018, it was held that central excise duty paid on welding electrodes used for repair and maintenance of plant and machinery is not admissible for availment of cenvat credit. However, the said decision was appealed against before Hon'ble Supreme Court and the same was tagged along with Civil Appeal No.6142 of 2010. The said Civil Appeal No.6142 of 2010 was decided along with Civil Appeal No.4704 of 2007 along with many other appeals, by Hon'ble Supreme Court and the same is reported as The Kisan Cooperative Sugar Factory Ltd. vs. Commissioner of Central Excise, Meerut-1. I note that at Serial Nos. 24, 25, 26, 27, 28, 29 and 30 of the list of civil appeals listed in para 3 of the said judgment, welding electrodes is the subject matter of consideration and I find that Hon'ble Supreme Court has held through para 20 of the said judgment that credit on welding electrodes and other items such as jointing sheets, SS plates etc. used for maintenance, repair, upkeep and fabrication of plant and machinery are admissible to the assessee. Following the judgment of Hon'ble Supreme Court in the above cited case of The Kisan Cooperative Sugar Factory Ltd., I hold that the appellant was eligible for cenvat credit of Rs.1,24,044/-.

7. To sum up, I hold that the appellant was eligible for cenvat credit of Rs.26,445/-, Rs.60,776/-, Rs.4,68,680/- and Rs.1,24,044/- as detailed in foregoing paras.

8. In view of my above findings, I allow the appeal by setting aside the impugned order.

(Order pronounced in the open court on 22.08.2024)

(Anil G. Shakkarwar)
Member (Technical)

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