7IN THE CUSTOMS, EXCISE & SERVICE TAX
APPELLATE TRIBUNAL
West Block No. 2, R.K. Puram, New Delhi – 110 066.

Date of Hearing/Order: 23.4.2018

Appeal No. E/51462/2017-SM

(Arising out of Order-in-Appeal No. BHO-EXCUS-002-APP-108-17-18 dated 26.5.2017 passed by the Commissioner (Appeals), Custom & Central Excise, Raipur)

Sourabh Rolling Mills Pvt. Ltd. Appellant

Vs.

CCE, Raipur Respondent

Appearance

Ms. Rinky Arora, Advocate - for the appellant

Shri H.C. Saini, D.R. - for the respondent

CORAM: Hon'ble Mrs. Archana Wadhwa, Member (Judicial)

Final Order No. 51588/2018

Per Ms. Archana Wadhwa:

The appellant is engaged in the manufacture of re-rollable products and during the period November 2007 to December 2011 availed Cenvat credit of duty paid on various structural items like plates, rounds etc, used in the fabrication of cooling bed. As per the audit objection, they were issued a show cause notice on 9.4.2014, by invoking the longer period of limitation proposing to deny the credit on the ground that the appellant have not shown appropriate use of the said inputs. Accordingly, Cenvat credit to the tune of around Rs. 7,49,913/- stands disallowed to them.

2. It is seen that that the appellant during the course of adjudication as also appellate proceedings before Commissioner (Appeals) produced a Chartered Engineer certificate indicating the use of 187.960 MTs of inputs in the manufacture of cooling bed. The authorities observed that the total quantity under dispute is only to the extent of 186.090 MTs and as such the certificate produced by the Chartered Engineer is in incorrect. Accordingly, they confirmed the demand and imposed penalties.

3. I find that irrespective of the quantities mentioned in the Chartered Engineer certificate, the various structural items used in the manufacture of cooling bed have been held to be Cenvatable in the Tribunal's decision in the case of ***Ramsons TMT Pvt. Ltd. Vs. CCE, Nagpur -*** 2016(344) ELT 421 (Tri.-Mumbai) as also in the case of ***Jodhpur Alloys Pvt. Ltd. Vs. CCE, Jaipur*** – 2013 (292) ELT 448 (Tri.-Del.). As such the inputs are required to be held as Cenvatable.

Apart from the merits, I also note that the demand is raised by invoking the longer period. The entire credit was availed by the appellant by reflecting the same in Cenvat Credit Account and in absence of any positive evidence to show that there was any suppression or misstatement on the part of the appellant with a malafide, the extended period is not available to the Revenue. Accordingly, the demand is also held to be hit by the limitation.

4. Apart from above, a part of demand to the extent of Rs.85,958/- stands denied in respect of MS round which are used as a spoon to remove the slag from induction furnace, on the ground that the appellants have not produced any evidence showing use of such quantity of MS round during the period.

Ld. Advocate submits that they are maintaining the recording of such inputs in Tally software and the said use is on daily basis for removing the slag from the furnace and the appellate authority has himself observed that they are Cenvatable inputs. In such a scenario, there was no justification for demanding the credit back.

Apart from the fact that the said demand also stands raised by invoking longer period, in the same show cause notice and as already observed is hit by bar of limitation, I also note that the Revenue apart from rejecting the assessee's stand, has not shown as to how the said MS rounds has been consumed by the assessee. It is not the Revenue`s case that the same after availing the credit in their Cenvat accounts and after making entry therein, have been cleared by the appellant clandestinely. This is well settled law that the one who demand duties has to make the allegations. In the absence of any allegation to that effect, I find no justification for upholding the said demand also.

5. In view of foregoing, the impugned orders are set aside and the appeal allowed with consequential relief.

(Dictated & pronounced in open Court)

(Archana Wadhwa)
Member (Judicial)

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