CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI
PRINCIPAL BENCH - COURT NO. II

Excise Appeal No. 51293 of 2019

(Arising out of Order-in-Appeal No. IND-EXCUS-000-APP-016-19-20 dated 25.04.2019 passed by the Commissioner (Appeals), Customs, Central Goods & Service Tax & Central Excise, Indore (M.P.)

M/s K K Spun India Ltd. **Appellant**
10th Floor, Tower A Vatika Mindsape,
12/3, Sarai, Khwaja, Mathura Road,
Sector-27, Faridabad-121003.

VERSUS

Commissioner of Central Excise **Respondent**
Customs and Service Tax, Indore
Post Box No. 10, Manik Bagh Road,
Manink Bagh Palace, Indore
Mahya Pradesh-452001

APPEARANCE:

Mr. Kamal Jeet Singh, Advocate for the Appellant
Ms. Tamanna Alam, Authorised Representative for the Respondent

CORAM:

HON'BLE MR. ANIL CHOUDHARY, MEMBER (JUDICIAL)

FINAL ORDER NO. 50597 / 2022

Date of Hearing: 17.06.2022
Date of Decision: 12.07.2022

ANIL CHOUDHARY:

The issue in this appeal is whether the appellant have rightly taken Cenvat credit on capital goods.

2. The appellant is engaged in manufacturing of RCC pipes, taxable under chapter heading no. 68109990 of the CETA. The appellant had availed Cenvat credit on receipt of capital goods during the period April to June 2017, totalling Rs. 46,85,471/-. The appellant have also

removed some of the capital goods, on payment of duty totalling Rs. 9,40,799/. During this period, as per the ER-1 Returns, the appellant had reflected the transaction of taking of Cenvat credit and also utilisation/reversal of the same in part, on removal of capital goods. Further, as per the ER-1 Returns, for the period April 2017 to June 2017, there was no production, nor any clearance.

3. It appeared to revenue that as the appellant was clearing their finished goods– RCC pipes, for eligible project being 'Khan River Diversion Project' of the Water Resources Department, Government of Madhya Pradesh, under Notification No. 12/2012 – CE dated 17th March 2012, and thus was entitled to exemption and also availed the same.

4. It appeared to revenue that as per Rule 6(4) of CCR, appellant could not have taken the Cenvat credit on the capital goods, as Rule 6(4) provides – no Cenvat credit shall be allowed on capital goods which are used exclusively in the manufacture of exempted goods or in providing exempted services, other than the final products which are exempted from the whole of the duty of excise leviable thereon, under any notification, where exemption is granted based upon the value or quantity of clearances made in a financial year. It further appeared that the appellant does not fall under exclusion Clause, where exemption is granted based upon the value or quantity of clearance made in a financial year under any notification. Accordingly, SCN dated 10th November 2017, was issued proposing to demand Cenvat credit Rs. 46,85,471/- alongwith interest and penalty was also proposed.

5. The SCN was adjudicated *vide* ex parte O-I-O dated 3rd January 2019, and the proposed demand was confirmed alongwith interest and equal amount of penalty under Rule 15(1) of CCR. Being aggrieved,

the appellant preferred appeal before the Commissioner (Appeals). The Commissioner (Appeals) was pleased to allow the appeal in part by confirming the demand of Cenvat credit with interest, however, was pleased to reduce the penalty amount to Rs. 1 lakh. Being aggrieved the appellant assessee is before this Tribunal.

6. Learned Counsel for the appellant urges that the show cause notice is mis-conceived, as the finished products manufactured by the appellant are not exempted, rather are dutiable @ 10% *ad valorem* as per CTH 68109990 under the Central Excise Tariff Act. Thus, the finished product of the appellant are taxable in normal course. Only, for supplies made for specific project under Notification No. 12/2012 – CE, exemption is available. In this view of the matter, the appellant have rightly taken the Cenvat credit. Further, admittedly there is no utilisation of such Cenvat credit, for removal of the finished goods. Admittedly, appellant have utilised or reversed such Cenvat credit for payment of duty on removal of capital goods. Thus, it amounts to reversal of Cenvat credit taken by the appellant, as held by Hon'ble Supreme Court in the case of Chandrapur Magnet Industries. Accordingly, he prays for allowing the appeal with consequential benefits.

7. Learned Authorised Representative for Revenue relies on the impugned order.

8. Having considered the rival contentions, I find that the appellant is entitled to take Cenvat credit on the capital goods, as their finished goods falling under CTH 68109990 are dutiable under the Central Excise Tariff Act. Thus Rule 6(4) of CCR is not attracted. Thus, I hold that the show cause notice is mis-conceived. I further hold that the appellant have rightly taken Cenvat credit on the capital goods.

Accordingly, the appeal is allowed and the impugned order is set aside. The appellant is entitled to consequential benefits, in accordance with law.

9. Appeal allowed.

(Order pronounced on 12.07.2022)

Anil Choudhary
Member(Judicial)

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