

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA**

REGIONAL BENCH - COURT NO.2

Excise Appeal No.76349 of 2018

(Arising out of Order-in-Appeal No.08/SKS/BOL/CE/2017-18/864 dated 30.01.2018 passed by Additional Director General (Taxpayer Services), Central Excise, Customs & Service Tax, Kolkata Zonal Unit, Kolkata.)

M/s. Shakambari Overseas Traders Private Limited

(Raturia Industrial Area, Angadpur, Durgapur, Pin-713215.)

...Appellant

VERSUS

Commissioner of CGST & CX, Bolpur Commissionerate

.....Respondent

(Nanoor Chandidas Road, Sian, Bolpur, Dist: Birbhum, West Bengal.)

APPEARANCE

Shri N.K.Chowdhury, Advocate for the Appellant (s)

Shri A.Roy, Authorized Representative for the Respondent (s)

CORAM: HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75013/2023

DATE OF HEARING : 3 January 2023
DATE OF DECISION : 20 January 2023

P.K.CHOUDHARY :

The Appellant is engaged in the manufacture of non-alloy ingot and industrial oxygen gas.

2. The facts of the case in brief are that a Show Cause Notice dated 30th April, 2010 was issued to the Appellant alleging irregular availment of CENVAT Credit of Rs.24,59,842/- availed against 1372.35 MT of TMT Bars (cutting), Tore Steel/MS Tore (cutting) during the period from April, 2009 to October, 2009. It is the case of the Department that the above mentioned items of steels, cannot be treated as any input used for the manufacture of their finished goods i.e. MS Ingot. The Show Cause Notice also mentioned that no prudent manufacturer can take into use a product of higher value to manufacture a lower valued

product in as much as TMT bars cannot be treated as any input for manufacture of MS Ingot. The Adjudicating authority confirmed the demand of CENVAT Credit of Rs.24,59,842/- and also imposed penalty of an equal amount under Rule 15(1) of CENVAT Credit Rules, 2004. On appeal, the Ld.Commissioner(Appeals) dismissed the Appeal before him. Hence the present Appeal before this Tribunal.

3. The Ld.Advocate appearing on behalf of the Appellant submits that the Ld.Commissioner(Appeals) has passed the Order-in-Appeal dated 30.01.2018 *ex parte* without granting reasonable opportunity of hearing which is violative of the principles of natural justice and makes the order a nullity. Further the submissions made in the grounds of Appeal were not considered and he just reiterated the findings of the Adjudicating authority that the disputed goods were of prime quality materials and not scrap and as such profitability aspect could not be satisfied and further the goods were not declared in the ER-6 Return. The Ld.Advocate further submits that the question of using the prime quality materials for manufacture of their final products is unwarranted. Since they have purchased TMT bars and/or cuttings thereof for use of melting scrap in the manufacture of their final products i.e. MS ingots, since such waste and scrap of iron and steel were not used in the manufacture of the final products, they are treated to be as input and credit admissible on such inputs inasmuch as the Appellant had paid duty on their final products and under such circumstances credit cannot be denied. He further submits that there is no dispute as to the receipt and consumption of the inputs and he draws my attention to the invoices issued by the suppliers to emphasize that the inputs which were received by them from the suppliers, who are registered dealers and were more or less at the same price as supplied by the manufacturer. The Ld.Advocate vehemently argues that the observation of the Ld.Commissioner that TMT bars and Tore Steel were obtained from rolling of MS ingots/billets, therefore, TMT bars, TMT bar cutting, Tore steel, MS Tore cutting are value added downstream products obtained from lower value MS ingots. It is his submission that the iron

and steel in the form of TMT bar and cutting were absolutely of inferior quality but at the same time they could be used as melting scrap in the manufacture of MS ingots hence credit cannot be denied on such iron and steel products. In support of his submissions, he relied upon the decision of the Tribunal in the case of Bhagwati Steel Cast Ltd. v. Commissioner of Central Excise, Nasik [2008 (222) E.L.T. 158 (Tri.-Mumbai)], Regent Overseas Pvt.Ltd. v. Union of India [2017 (6) G.S.T.L. 15 (Guj.)], Gupta Metal Industries v. Commissioner of Central Excise, Delhi [2004 (178) E.L.T. 805 (Tri.-Del.)].

4. The Ld.Authorized Representative for the Department justified the impugned orders and prayed that the Appeal filed by the Appellant may be rejected being devoid of any merit.

5. Heard both sides and perused the Appeal records.

6. I find that the manufacturer has taken entire credit in respect of inputs used in or in relation to the manufacture of the final products. It is seen that the suppliers are registered Central Excise dealers. The invoices under which the consignment was received by the Appellant is not in dispute. The said invoices clearly indicate duty-paid character of the said goods. It is also undisputed that the said inputs were received in the factory of the Appellants and consumed therein. It is the case of the Revenue that inputs being of prime quality the Appellants could not have used the same for melting. I find that there is no restriction in the CENVAT Credit Rules that the Appellants should not use the prime quality materials for the manufacture of final products. As long as there is no dispute regarding the receipt and consumption of the inputs, duty-paid character thereof, the benefit of the CENVAT Credit cannot be denied to the Appellant. The facts of the present case are squarely covered by the decision of the Tribunal in the case of Gupta Metal Industries (supra) and Bhagwati Steel Cast Ltd. (supra). In the present case there is no dispute as regards the payment made by the Appellant to the supplier and therefore the benefit of CENVAT Credit cannot be denied.

In view of the above discussions, the impugned orders are set aside and Appeal filed by the Appellant is allowed with consequential relief, as per law.

(Order pronounced in the open court on 20 January 2023.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

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