CESTAT, KOLKATA BENCH

Seven Star Steels Ltd.

v.

Commissioner of Central Excise, Customs & Service Tax, BBSR-II

DR. D.M. MISRA, JUDICIAL MEMBER
ORDER NO. A/868/KOL./2012
APPEAL NO. ST/21 OF 2011
DECEMBER 7, 2012

ORDER

1. This is an appeal filed by the appellant against the Order-in-Appeal No. 44/ST/B-II/2010, dated 14.10.2010 passed by Commr. (Appeals) of Central Excise, Customs & S. Tax, Bhubaneswar.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture of sponge iron in their factory at Kelandamal, Orissa. For the manufacture of the said finished goods, the appellants procured iron ores during the period April, 2007 to March, 2009. In procuring the said input, the appellants had paid service tax of Rs .35,73,629/- on GTA service amounting to Rs. 10,66,87,195/-. It is the case of the Department that instead of utilizing the entire quantity of iron ores in the manufacture of final products, they have sold a quantity of 2455.05 MTs of "iron ores" as "iron ore fines". It is alleged that the appellants have sold the input as such and did not use the same in or in relation to the manufacture of final product. Accordingly, the proportionate cenvat credit of service tax paid on the GTA service in bringing those "iron ore fines" and availed by them as cenvat credit and was directed to be reversed being not used in the manufacture of final products. The said demand was confirmed by the adjudicating authority and an penalty of Rs.2,000/- was imposed under Rule 15 of Cenvat Credit Rules, 2004, besides recovery of interest. Aggrieved, the appellants filed the appeal before the ld. Commissioner (Appeals), who upheld the order of the adjudicating authority. Hence the appeal.

3. The ld. Advocate appearing for the appellant, submitted that they are engaged in the manufacture of sponge iron and the iron ore is one of the basic raw materials for the manufacture of the said finished goods. During the relevant period, they purchased the sized ores for the manufacture of sponge iron and the fines content have to be first removed, otherwise it would stick on the inner wall of the Kiln and reduce the space inside the Kiln which is called accretion. The contention is that higher the accretion inside the Kiln, more shut down is required to be taken for remaining accretion causes loss of production. The contention is that besides the fines caused pollution hazards and accordingly prohibited under Environment Protection Laws. The contention is that for removal of fines from iron ore for the manufacture of sponge iron, it is passed through screening process. The contention is that after the screening process is over, iron ores are fed to the conveyor system, which takes the iron ore to the stock house from where it is charged into the Rotary Kiln where the process of direct reduction for manufacture of sponge iron is carried out. It is the submissions of the Id. Advocate that the process of screening of iron ore is an integral, essential and indispensable part of the manufacturing process of sponge iron. The contention is that the iron ore fines generated in the process of screening are in the nature of unavoidable waste which fetches some price when sold in the market. He submitted that in terms of Rule 3 read with Rule 2 (I) of Cenvat Credit Rules, 2004, the credit on input services, cannot

be denied or varied on the ground that some part of the input is contained in the waste. Further he submitted that the iron ore fines were not removed as such, but were wastes generated from the manufacture process, hence, the condition of "use in or in relation to" as mentioned in Rule 2 (I) read with Rule 3 (1) stands fully satisfied. Further, he submitted that Rule 3 (5) of Cenvat Credit Rules, 2004, prescribed reversal of cenvat credit on inputs or capital goods when removed "as such", whereas in the present case, neither the inputs nor the capital goods were removed as such, but the demand relates to the inputs service tax credit availed on GTA services for bringing the inputs, namely, iron ores into the factory. It is the submission that Rule 3 (5) of Cenvat Credit Rules, 2004 does not apply to input services. He referred to the decision of the Hon'ble Punjab & Haryana High Court in the case of *CCE* v. *Punjab Steels* [2010] 29 STT 168. He relied upon the Tribunal's decisions in the cases of *CCE* v. *Vikram Ispat Ltd*. 2007 (211) ELT 60 (Tri.-Mum.), *Chitrakoot Steel & Power (P). Ltd.* v. *CCE* [Final order No. 1420 of 2007, dated 29-11-2007] & *Sponge Udyog (P.) Ltd.* v. *CCE, C & ST* vide Tribunal's Order No.S-422/A-650/Kol/2010 dated 10.12.2010.

4. The ld. A.R. appearing for the Revenue reiterated the findings of the Id. Commissioner (Appeals).

5. Heard both sides and perused the records. I find that the appellants had procured iron ores during the period April 2007 to March, 2009, which were used in the manufacture of their final product, namely, sponge iron. In bringing the said iron ores, which were used as input, the appellants had paid service tax on GTA services. Consequently, they had availed cenvat credit on the amount of service tax paid on GTA service as the same satisfies the definition of input service prescribed under Section 2 (I) of Cenvat Credit Rules, 2004. During the course of manufacture of sponge iron, the said iron ore was subjected to the process of screening and after completion of the said process, iron ore fines were generated. It is the case of the Revenue that these iron ore fines were not used in the manufacture of their final product, namely, sponge iron, but were sold in the market. Therefore, since the iron ores were sold as such without being used in the manufacture of products, proportionately the cenvat credit availed on GTA services for bringing iron ore to the factory were required to be reversed under Rule 3 (5) of Cenvat Credit Rules, 2004. I do not find merit in the said allegation of the Department on two counts ; firstly, the input iron ores after being brought to the factory, were subjected to the process of screening and process of screening as explained by their Id. Advocate, would definitely a part of the manufacturing process. After the iron ores are subjected to the process of screening, the same could not be called as input as such. Secondly, I find that Rule 3 (5) of the Cenvat Credit Rules, 2004, is directed for reversal of cenvat credit on inputs or capital goods and the same is not applicable to the credit availed on the "input services". In this connection, the Hon'ble High Court of Punjab & Haryana in the case of *Punjab Steels* (*supra*), had observed at Para 10, which reads as under :

> "10. Be that as it may, however, still even on merits, this court finds that the view as expressed by the Tribunal is strictly in conformity with the Rules. Rule 2(k) of the Rules defines 'input', whereas Rule 2(1) defines 'input service', meaning thereby both the terms have been defined independently. Rule 3 defines the term 'Cenvat credit', which includes duty paid under various enactments and also the service tax leviable under Section 66 of the Finance Act, 1994. Rule 3(5) of the Rules only talks about the-Cenvat credit taken on inputs or capital goods. It does not refer to the Cenvat on input service, whereas Rule 5, on which reliance is sought to be placed by the Revenue, specifically talks about the Cenvat credit on any input or input service used in the manufacture of final product. This rule pertains to refund in case of exports, which stands altogether on different footings. Once

the rule-making authority has defined the terms specifically and used the same in different provisions consciously, the argument of learned counsel for the Revenue that merely by analogy even if in one provision both the terms have been used, the same should be read in the other provision as well, where it has not been specifically mentioned, has no legs to stand, as the tax cannot be levied merely by inference or presumption. It is not possible to assume any intention or governing purpose of the statute more than what is stated in the plain language. Words cannot be added or substituted so as to give a particular meaning "

6. The same view was taken by this Tribunal in the case of *Chitrakoot Steel & Power (P.) Ltd.* (*supra*) The relevant portion of the Order of the Tribunal in the case of *Chitrakoot Steel & Power (P.) Ltd.* (*supra*) is reproduced below :

"5. On a careful study or the statutory provisions, it is seen that when the credit availed inputs or capital goods are removed from the factory of the assessee, sub-rule (5) of Rule 3 of the Cenvat Credit Rules, 2004 provides for recovery of equal amount of credit. There is no such provision to reverse credit of service tax availed in relation to such inputs or capital goods when removed from the factory. Moreover, Rule 14 of the Cenvat Credit Rules, 2004 provides for recovery of Cenvat credit availed or utilized wrongly. In the instant case, the appellants had taken the credit correctly in terms of the statutory provisions. No provision exists in the Finance Act, 1994, which would render utilization of such credit erroneous for the reason that some of the inputs, transport of which yielded GTA service tax credit are returned as not suitable. The credit availed is anyway used to pay duty on the finished goods. In the circumstances, I find that the impugned order sustaining the demand of service tax and education cess to be not sustainable and accordingly, vacate the same."

The said principle has been followed in *Sponge Udyog (P.) Ltd.* case (*supra*). In the light of the above consistent view, I do not find merit in the order of the Id. Commissioner (Appeals). Consequently, the same is set aside and the appeal filed the appellant is allowed with consequential relief, if any, as per law.