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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (CENTRAL EXCISE)
ORIGINAL SIDE

CEXA/66/2009
COMMISSIONER OF CENTRAL EXCISE, KOL-II
VERSUS
M/S. HINDALCO INDUSTRIES LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4TH MAY, 2022.

Appearance:-
Ms. Manasi Mukherjee, Adv.
...for Appellant
Mr. Deepro Sen, Adv.
... for respondent

The Court : This appeal filed under Section 35G of the Central Excise Act, 1944 (the Act for brevity) is directed against the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (the learned Tribunal) dated 11th June, 2009 in Excise Appeal No. 57 of 2009. The appeal was admitted on 3rd February 2010 on the following substantial questions of law:-

1) Whether the Learned Tribunal erred in not appreciating that as per the provisions of Rule 57AE of the Central Excise Rules, 1944 and Rules 7(3) and 7(4) of the Cenvat Credit Rules, 2001/2002 as were in force at the material point of time availing of Cenvat Credit on inputs received on stock transfer was not admissible ?

2) Whether "purchase" of inputs and maintaining a record inventory of the inputs so purchased are mandatory conditions to be fulfilled for availing Cenvat Credit on inputs received by a manufacture prior to February 28, 2003?

3) Whether the learned Tribunal erred in not holding that the respondent had not discharged their buden of proof fulfillng the criterion of keeping a records on inventory of th inputs purchased by them while availing Cenvat Credit?

We have heard Ms. Manasi Mukherjee, learned standing Counsel appearing for the appellant/revenue and Mr. Deepro Sen, learned counsel appearing for the respondent/assessee

On perusal of the order passed by the learned Tribunal, we find that Tribunal had followed the decision in the case of Exide Industries Vs. CCE, Haldia-2008 (226) ELT 249(Tri.-Kolkata) and allowed the appeal filed by the assessee. The decision in Exide Industries appears to have attained finality and the Tribunal had been consistently following the said decision in other cases as well. In one such case, Commissioner of Central Excise, Kolkata-VI Vs. Coates of India Ltd. 2018 (7) TMI-CESTAT Kolkata, the learned Tribunal had followed the decision in Exide Industries (supra). The operative portion of the decision reads as follows :-

"6. We find that the issue is no more resintegra and is covered by the decision of the Hon'ble Tribunal in the case of Exide Industries Ltd. Vs. Commissioner of Central Excise, Haldia (supra). The relevant portion of the same are reproduced as under:

"2.3. He also submitted that Revenue made out a case without properly appreciating the judgment of Hon'ble Supreme Court in the case of Commissioner of Central Excise, Nagpur v. M/s. Ballarpur Industries Ltd. reported at 2007 (215) E.L.T. 489 (S.C.). The Apex Court held that show cause notice being foundation of a proceeding, if that was baseless for no sanction off law to deny the benefit, proceeding shall not proceed against the Appellant. Althouh the judgment was delivered by Hon'ble Apex Court under the earlier Rule 57CC of Central Excise Rules, 1944, whether sale was pre-requisite for availing modvat credit in respec tof stock transfer to one unit by another, the ratio laid down in the Judgment governs the field and applies to the Appellant. He specifically drew attention of the Bench to definition of "input" under Rule 57AA of Central Excise Rules, 2000 and submitted that said "input" is not required to be "purchased" by a unit claiming CENVAT credit. He further argued that 57AB permits a manufacturer to avail credit without any embargo of "sale". Similarly 57AC provides conditions for allowing CENVAT credit. Nowhere in the Rule, essential condition of purchase is required to be satisfied. Use of "input" being a requirement for grant of CENVAT credit, mode of acquisition off input is immaterial.

2.4 Learned Counsel also drew our attention to Notification No. 13/03 dated 1-3-2003 and submitted that entire difficulty in interpretation was obviated substituting the word 'procured' in place of the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002. Therefor procurement is a requirement and use of input is another essential requirement to avail CENVAT credit and any construction contrary to that would defeat of spirit of

CENVAT credit in absence of ultimate finding that Modvated input has not yielded revenue on clearance of finished goods.

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4.3 Relevant period involved in the proceeding was April, 2000 to March, 2002 raising aforesaid demand on the allegation that input received by one unit from its sister unit wee not entitled to CENVAT credit . There is nothing on record to state whether inputs so received were not used in manufacture. Also record does not demonstrate that input had not undergone suffering appropriate duty before procurement. The order of adjudication also fails to exhibit that "purchase" is an" essentially to claim CENVAT credit under law even if the term "procurement" being substituted in Rule 7(4) of CENVAT Credit Rules, 2002. There is no doubt that Notification No. 13/03, dated 1-3-2003 has substituted the word 'procured' for the word 'purchase' in sub-rule (4) of Rule 7 of CENVAT Credit Rules, 2002 w.e.f. 1-3-2003. But Notification No. 27/2000, dated 31-3-2000 which sought to amend CENVAT Credit Rules, 2000 does not prohibit to read the said substitution for the period earlier to that, under challenge. Definition "inputs" under Rule 57A of Central Excise Rules, 1944 read with Rule 57B and conditions laid down by Rule 57AC nowhere warranted 'purchase' is sine qua non. Therefore Notification No.13/2003, dated 1-3-2003 guides to appreciate legislative intention. Further, decisions cited by learned Counsel also brings its case in all four. When a levy is not expressly designed by law by a statutory *provision, respective Rule which grants credit cannot be presumed to be a charging section by any analogy".*

The decision in Coates of India Limited was appealed against by the revenue before this Court in CEXA 8 of 2019 and the Hon'ble Division Bench by judgment dated 1st July 2019 dismissed the appeal noting that the Tribunal in the said case had followed the decision of the Hon'ble Supreme Court in Commissioner of Central Excise, Nagpur Vs. M/s. Ballarpur Industries Ltd., 2007 (215) ELT 489 (SC). We find no distinguishing circumstances in the case on hand and more importantly, the revenue has not raised any ground to state as to why the decision in Exide Industries or the decision in Ballapur Industries Ltd. cannot be made applicable to the assessee's case. Thus, for the above reason we find no ground to interfere with the order passed by the Tribunal and accordingly, the appeal fails and is dismissed.

Substantial question of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
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