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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [CENTRAL EXCISE]
ORIGINAL SIDE

CEXA/36/2019
IA NO: GA/3/2025

COMMISSIONER OF CENTRAL EXCISE, BOLPUR
(NOW KNOWN AS CGST BOLPUR COMMISSIONERATE)
VS
M/S. STEEL AUTHORITY OF INDIA LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
AND
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : MAY 7, 2025.

Mr. Kaushik Dey, Adv.
Mr. Abhradip Maity, Adv.
Ms. Shatabdi Sen, Adv.
...for Appellant
Mr. Shovit Betal, Adv.
...for Respondent

The Court :- This application has been filed to condone the delay in filing the application for restoration and to restore the appeal which was dismissed for non prosecution by order dated 28th June, 2024.

We have perused the reasons given by the applicant for not being present on the day when the matter was called. The reasons are acceptable and are not being disputed by the assessee. Therefore, the delay in filing the application is condoned and the appeal stands restored to its original file and number of this Court to be heard and disposed of. The application, IA No: GA/3/2025, is allowed.

CEXA/36/2019

The appeal is taken up for hearing by consent of the parties treating the same as on the day's list.

This appeal has been preferred by the revenue under Section 35G of the Central Excise Act, 1944 challenging the order passed by the Customs, Excise and Service Tax Appellate Tribunal, East Zonal Bench, Kolkata (Tribunal) in Customs Appeal no.E/368/2010, dated 3rd May, 2018. The appeal was admitted on 27th January, 2022 on the following two substantial questions of law :

> "(1) Whether on the facts and in the circumstances of the case the fixed facility charge claimed by the assessee as an input was admissible under the CENVAT Credit Rules, 2004 ?
>
> (2) Whether on the facts and in the circumstances of the case the tribunal erred in allowing the said charge as claimed as an input by the assessee ?"

We have elaborately heard the learned senior standing counsel appearing for the appellant/revenue and the learned counsel appearing for the respondent/assessee.

The assessee, Steel Authority of India Ltd., challenged the order passed by the Commissioner of Central Excise, Bolpur dated 9th March, 2010, by which the authority demanded CENVAT credit of Rs.4,09,39,520/- including Education cess and Secondary and Higher Education cess in terms of Rule

2014 of the CENVAT Credit Rules, 2004, read with Section 11A(2) of the Central Excise Act, 1944. Penalty and interest was also levied. The appellant challenged the said order before the learned Tribunal which appeal had been allowed by the learned Tribunal, which is impugned in this appeal.

The facts which are necessary to be noted are that the responden/assessee is a Public Sector Undertaking and entered into an agreement with M/s. Goyel MG Gases (P) Ltd. during the period 2004-09. The revenue was of the opinion that the duty paid on fixed facility charges cannot be made available as CENVAT credit to the assessee as the said payment of duty has no nexus with the manufacture of the finished goods by the assessee in their factory premises and in this regard, the definition of "input" as defined under Rule 2(k) of the CENVAT Credit Rules, 2004 was referred to. The learned Tribunal took note of the fact that identical issue was considered in the assessee's own case and by final order dated March 23, 2018, the claim of the assessee with regard to CENVAT credit on the duty paid on fixed facility charges was allowed. While doing so, the order passed by the co-ordinate Bench of the Tribunal in the case of Commissioner of Excise, Hyderabad vs. Aurobindo Pharma Ltd., [2010 (261) ELT 1066 (Tri.-Bangalore)] was relied on. The revenue challenged the said order before this Court in CEXA 52/2019 and the said appeal was dismissed by the Hon'ble Division Bench by judgment dated February 24, 2020. Thus, the issue in the assessee's own case having been decided, the revenue cannot take a different view in the matter though the only distinction in the instant case is that the fixed facility charges is in respect of the facility which was provided for supply of liquid oxygen whereas in the other case it was liquid nitrogen. That apart, the clarification issued by the Central Board of Excise and Customs dated November 10, 2014 also comes to the aid and assistance of the assessee wherein it was clarified that in the months back there is supply of gas, all elements of consideration, such as price of gas at designated rate per unit of gas and FFC would be added to determine the assessable value for payment of Central Excise Duty. Further, it was clarified that where the gases so supplied are used by another assessee as 'inputs', admissibility of the duty paid on gases as reflected in the invoice for all situations would be decided in accordance with the provisions of the CENVAT Credit Rules, 2004. That apart, on facts it is not in dispute that the supplier had paid the duty and the value of the gas which was supplied was also included in the assessable value.

Therefore, we find that the learned Tribunal was fully right in allowing the assessee's appeal. Accordingly, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS) , J.)

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