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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

CEXA/26/2023
IA NO: GA/1/2024
COMMISSIONER OF CGST & CENTRAL EXCISE, BOLPUR COMMISSIONERATE
VS.
M/S. SARVA MANGALAM GAJANAN STEEL PVT. LTD.

CEXA/25/2023
IA NO: GA/1/2024
COMMISSIONER OF CGST & CENTRAL EXCISE, BOLPUR COMMISSIONERATE
VS.
M/S. SARVA MANGALAM GAJANAN STEEL PVT. LTD.

BEFORE :
THE HON'BLE Chief JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 12th April, 2024

Appearance :

Mr. Shiv Shankar Banerjee, Adv.
Mr. Tapan Bhanja, Adv.
Mr. Nilarnab Paul, Adv.
... for petitioner

Mr. Ankit Kanodia, Adv.
Ms. Megha Agarwal, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 35G(1) of the Central Excise Act, 1944 is directed against the order dated 5th June, 2023 passed by the Customs, Excise and Service Tax Appellate Tribunal, Kolkata, Eastern Zonal Bench in Excise Appeal No. 75898 of 2017.

The revenue has raised the following substantial questions of law for consideration :-

i) Whether in terms of Rule 3(1) of the Cenvat Credit Rules, 2004 the respondent/assessee is eligible to avail Cenvat credit on inputs when the respondent does not possess any furnace to use such inputs in or in relation to manufacture of final product ?

ii) Whether in the facts and circumstances of the case the Learned Tribunal is right and justified in observing that for the purpose of eligibility of Cenvat Credit, the classification of the input is irrelevant ?

iii) Whether the respondent can avail Cenvat Credit on the goods which failed to satisfy the definition of `input' in terms of Rule 2(k) of the Cenvat Credit Rules, 2004 and the same were not used in or in relation to manufacture for excisable final products ?

iv) Whether in terms of Rule 9(5) of the Cenvat Credit Rules, 2004 the burden of proof is upon the respondent to establish that the goods covered under Central Excise Tariff sub-heading No.72044100 procured by the respondent treating them as `inputs' has been used in the manufacture of finished products without requiring a furnace in the factory?

We have heard Mr. Shiv Shankar Banerjee, learned Counsel appearing with Mr. Tapan Bhanja, learned Advocate for the petitioner and Mr. Ankit Kanodia, learned Counsel for the respondent.

This is the second round of litigation before this Court concerning the very same assessee. Earlier, the revenue had filed an appeal before this Court in

CEXA 27 of 2021 challenging the order passed by the Tribual dated 22nd March, 2018. The Court held that since the classification issue has not been decided by the Tribunal, the matter should be remanded to the learned Tribunal for fresh consideration. Upon remand, in the impugned order the classification issue was taken up for consideration and the same has been decided against the assessee. However, the learned Tribunal in paragraph 5 of the impugned order after deciding the classification issue against the assessee and in favour of the Department has made an observation that the classification of the input is irrelevant for the purposes of considering eligibility of Cenvat credit. In our view, such observation was uncalled for by the Tribunal since the classification was raised by the assessee before the adjudicating authority and that issue was decided against the assessee and in the earlier appeal filed before this Court the said issue was argued by the assessee and the Court on being satisfied that the issue was not decided, remand the matter. Therefore, we have our own reservation on the observation made by the Tribunal that issue is of no relevance. Such an observation could not have been made dehors the facts. As a general proposition, the Tribunal may be right that the classification issue will not be a relevant issue for the purpose of claiming of Cenvat credit. However, when an issue is argued before this Court at the instance of the assessee and the revenue, the Court is bound to consider the same. Having said so, we now proceed to examine as to whether the Tribunal was right in allowing the assessee's appeal. In paragraph 13 of the impugned order, the Tribunal has taken note of the factual position and found that the assessee had purchased goods from SAIL and others and they have been subjected to heating, straightening to make them suitable for rolling and sometimes cut to sizes and then rerolled to manufacture their final products and the rolling mill installed by them have the capacity to roll such items. This factual position appears to have not been shown to be wrong by the Department. Further, the Tribunal has noted that the respondent's rolling mill has the capacity to roll such items and the Department has not produced any evidence to counter the claim. The argument on behalf of the revenue before is by referring to the observations made by the adjudicating authority in paragraph 6.2 of the order-in-original dated 13th February, 2017. However, we find the said observation is not relatable to the respondent assessee since the adjudicating authority after referring to the classification under Tariff Item No.72044100 makes an observation that for manufacture of MS Flat/Bar, MS Channel, MS Round, MS Angle, MS Ribbed Bar etc. There is a requirement of ingots and billets. However, this observation made by the adjudicating authority does not relate to the factual position of the assessee's case.

Thus, we find that the Tribunal has granted relief to the assessee on appreciating the factual position and we find no question of law much less substantial questions of law arising for consideration.

The appeals are dismissed. The stay applications are also dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

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