CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
MUMBAI
WEST ZONAL BENCH

Excise Appeal No. 85925 of 2021

(Arising out of Order-in-Appeal No. PUN-EXCUS-001-APP-310/2020-21 dated 22.03.2021 passed by the Commissioner(Appeals-I), Central Tax, Pune

Finolex Industries Ltd. **.....Appellant**
Pawas Road, Ranpur, At Ranpur,
Post Golap, Ratnagiri Pawas Road
Ratnagiri

VERSUS

Commissioner of Central Tax, Pune I **.....Respondent**
GST Bhawan, 41-A, Sasoon Road,
Opp. Wadia College, Pune

APPEARANCE:

Shri Rajesh Ostwal, Advocate & Ms. Payal Nahar, Advocate for the appellant
Shri Sunil Kumar Katiyar, AC(AR) for the respondent

CORAM:
HON'BLE MR. AJAY SHARMA, MEMBER (JUDICIAL)

FINAL ORDER No: 85432/2024

DATE OF HEARING : 04.01.2024
DATE OF DECISION : 24.04.2024

Per: AJAY SHARMA

This appeal has been filed assailing the impugned order dated 22.3.2021 passed by the Commissioner (Appeals-I) Central Tax, Pune by which the learned Commissioner while partly allowing the appeal, rejected it in part by holding that the appellant is not entitled for the Cenvat Credit on inputs and input

services used for the generation of electricity which, later on, is cleared to its sister unit situated at Urse and are liable to pay/reverse the Cenvat Credit involved in the said supply in terms of provisions of Rule 6(3A) of Cenvat Credit Rules, 2004 with interest and penalty.

2. The issue involved herein is whether Cenvat Credit on inputs and input service used for generation of electricity, is admissible to the appellant, which has been transferred *(not sold)* to its sister unit at Urse for manufacture of dutiable goods by them?

3. The facts leading to the filing of the instant appeal are stated in brief as follows. The appellants are engaged in the manufacture of PVC pipes, compounds, resins and fittings which are chargeable to excise duty. They used various duty paid inputs such a steam coal, turmoil, lubricant oil, caustic soda, boiler chemicals etc. and availed Cenvat Credit of duty paid by them on the said inputs. They have also installed an integrated captive power plant in the year 2010 at the manufacturing division, Ratnagiri, where the appellant firstly produces steam, a part of which is used captively to manufacture the dutiable goods and the rest is used to generate electricity. The excess electricity, if any, is either sold out to MSEDCL or transferred to its sister unit at Urse. The sister unit of the appellant is also engaged in the manufacture of dutiable final products. Since the appellant was not maintaining separate accounts of the dutiable

inputs and input services used in manufacturing of dutiable goods and for generating electricity wheeled outside the factory therefore they opted for the proportionate reversal as provide under Rule 6(3)(ii) ibid and kept reversing the cenvat credit taken on inputs and input services used for generating the electricity sold to MSEDL or transferred to its sister unit at Urse. When the appellant got to know about of a decision of this Tribunal in the matter of *Hindustan Zinc Ltd. vs. CCE; 2015(329) ELT 834 (Tri.-Del) that reversal of cenvat credit is not required on those inputs/input services which are used for generating electricity transferred to sister concern which is engaged in manufacturing activity* they, w.e.f. January 2015, discontinued the reversal of cenvat credits on the inputs/input services used for generating electricity that was later on transferred to its sister concern at Urse and filed a written declaration with the jurisdictional authority as required u/r. 6(3A) ibid.

4. Not satisfied with the manner of calculation of the cenvat credit by the appellant, the department issued 4 (four) show cause notices to the appellant for the period from April, 2015 to June, 2017 and denied the same on the ground that it is not in accordance with Rule 6(3) (ii) *ibid*. Out of the 4 show cause notices as aforesaid, only 2 are in issue herein which are for the period April, 2016 to September, 2016 and October, 2016 to June, 2017 respectively as common Order-in-Original dated 9.7.2020 adjudicated all the four show cause notices and the other two show cause notices for the period April, 2015 to

December, 2015 and January, 2016 to March, 2016 were dropped by the Adjudicating Authority on the ground that the appellant had given the required intimation to the department as per Rule 6(3A) ibid in the month of March, 2015. But for those two show cause notices which are in issue herein, the Adjudicating Authority confirmed the demand on the ground that no such information was furnished to the department for the period April, 2016 to June, 2017 which is mandatory as per Rule 6 *ibid*. On Appeal filed by the appellant, the learned Commissioner (Appeals) vide impugned order dated 22.3.2021 observed that so far as the failure on the part of the appellant about furnishing the required information u/r. 6 (3) or (3A) *ibid* is concerned, the adjudicating authority could have allowed the appellant to exercise the said option during the adjudication proceedings and held that the appellant is allowed to opt for one of the options under the provisions of Rule 6(3) *ibid*. But the said authority rejected the appeal of the appellant on the ground that they are not entitled to use Cenvat credit on inputs and input services, gone in the generation of electricity which is further supplied to MSEDCL or to their other unit situated at Urse and are required to pay/reverse the cenvat credit involved in the said supply in terms of provision of rule 6(3A) *ibid* alongwith interest and penalty. For arriving at the aforesaid conclusion the learned Commissioner relied upon the decision of the Hon'ble Supreme Court in the matter of *M/s. Maruti Suzuki Ltd. vs. CCE, Delhi-III; 2009(240)ELT 641 (SC).*

5. Learned counsel for the appellant submits that the demand has been proposed by the department u/r. 6(3) ibid @ 6% of the value of the electricity transferred by them to their sister unit at Urse and since it has been transferred free of cost, so the valuation has been arrived at by considering the value of electricity produced and sold by JSW Energy Ltd. to MSEDCL which is completely illogical. According to learned counsel, both the authorities below have proceeded on the assumption that during the period in issue the appellant had sold the electricity to MSEDCL also whereas no sale of electricity took place during that period. Even the show cause notice has specifically recorded that during the period in dispute the appellants have not sold electricity to MSEDCL.

6. I have heard learned counsel for the appellant and learned Authorised Representative for the Revenue and perused the case records including the written submissions/case laws placed on record. So far as the permission granted by learned Commissioner to the appellant is concerned, to opt for one of the options available u/r. 6(3) *ibid* is concerned, in my view the learned commissioner failed to appreciate that the same has already been submitted by the appellants way back on 28.3.2015 which has been relied upon in dropping the demand for the earlier period, as in the said communication it has been specifically mentioned that the appellant would follow similar formula in future also and therefore according to me no further deliberations are required on this issue. Otherwise also in

Appellant's own case i.e. *M/s. Finolex Industries Ltd. vs. Commissioner of CGST, Kolhapur [Excise Appeal No. 85489 of 2016]* for the period 2010-11 to August, 2013 this Tribunal vide *Final Order No. 85804/2023 dated 2.3.2023* has held that substantial benefit of proportional reversal should not be disallowed to the appellants just for reason of procedural irregularities such as non-filing of prior declaration or intimation with the department and accordingly therein the demand raised u/r. 6(3)(i) ibid on the ground that the appellants have not filed declaration u/r. 6(3)(ii) r/w rule 6(3A) ibid was held as erroneous. Now, in the instant matter, the issue remains is about the reversal of cenvat credit on the electricity transferred by the appellant to its sister unit at Urse for manufacture of dutiable goods. The demand has been proposed by the department u/r. 6(3) *ibid* @ 6% of the value of the electricity transferred by them to their sister unit at Urse. Since it has been transferred free of cost, so the valuation has been arrived at by considering the value of electricity produced and sold by JSW Energy Ltd. to MSEDCL which in my view, is not proper. Undisputedly the electricity has been transferred free of cost to the sister unit at Urse since nothing contrary has been brought on record by the revenue. For deciding this issue against the appellants and confirming the demand with interest and penalty, the learned commissioner has relied upon the law laid down by the Hon'ble Supreme Court in the matter of *M/s. Maruti Suzuki Ltd. (supra)* without realizing that therein it has been specifically

observed by the Hon'ble Supreme Court that the electricity had been cleared for a price. In this matter, the Hon'ble Supreme Court was dealing with the issue of sale of electricity by the assessee to the outside parties i.e. joint venture, vendors etc. as it has been specifically observed therein that the question to be answered is *whether an assessee would be entitled to claim CENVAT credit in cases where it sells electricity outside the factory to the joint ventures, vendors or gives it to the grid for distribution?* While answering the issue involved therein the Hon'ble Supreme Court held that *they are not entitled to CENVAT credit to the extent of the excess electricity cleared at the contractual rates in favour of joint ventures, vendors etc., which is sold at a price.* The relevant paragraph of the said decision is extracted as under:-

" xxx xxx xxx

20. ……. The important point to be noted is that, in the present case, excess electricity has been cleared by the assessee at the agreed rate from time to time in favour of its joint ventures, vendors etc. for a price and has also cleared such electricity in favour of the grid for distribution. To that extent, in our view, assessee was not entitled to CENVAT credit "

7. In the case in hand there is no such allegation about sale of electricity in the show cause notices but authorities below have proceeded on the premise that during this period the appellant had sold the electricity to MSEDCL also. As per

records, during the period in issue the electricity was supplied only to the sister unit at Urse and that too free of cost and in an identical situation this Tribunal in appellant's own case i.e. *M/s. Finolex Industries Ltd. (supra)* has held that no reversal needs to be made in respect of electricity supplied to their sister concern by the appellant. In that appeal at some point of time the electricity was also sold to MSEDCL, therefore for calculation purposes the matter was remanded back to the adjudicating authority but since in the case in hand there is no allegation of sale of electricity to MSEDCL in the show-cause notice therefore no remand is required.

8. In yet another decision the Hon'ble Rajasthan High Court, in the matter of *Commissioner of CGST, Jaipur vs. Shree Cement Ltd.; 2018(9) TMI 822-Rajasthan High Court*; where the facts were almost similar, while dismissing the Appeal filed by Revenue, held that the decision of the Hon'ble Supreme Court in the matter of *M/s. Maruti Suzuki Ltd. (supra)* will not apply and the view taken by the Tribunal is just and proper that the cenvat credit of inputs and input services used in the power generated in the captive power plant and transferred to the sister concern is admissible to the assessee since the input and input services were ultimately used in the manufacture of dutiable final products either by the assessee or by their sister concern.

9. In another decision, a co-ordinate Bench of the Tribunal in the matter of *Principal Commissioner, CGST & CE, Raipur vs.*

M/s. Hira Ferro Alloys Ltd.,, Unit-II; 2022(9) TMI 267-Cestat New Delhi; on an identical issue dismissed the appeal of Revenue. The relevant paragraph of the said decision is extracted as under:-

"xxx xxx xxx

12. The case of the appellant Revenue is that since part of the electricity is transferred to sister unit, the inputs used in generating it to that extent is an input for the sister unit as it is relatable to the goods manufactured by it and they are not inputs relatable to the final products of this respondent. Each unit is separately registered and is a separate assessee as far as central excise is concerned. To that extent the electricity is sold to outsiders, the respondent has reversed the CENVAT credit. We find that on identical issue, High Court of Rajasthan had, in Shree Cements Ltd., allowed CENVAT credit on the inputs used in production of electricity which is supplied free of cost to the assessee's sister unit. A bench of this Tribunal has also taken similar view in Sanghi Industries, Bilag Industries, and Hindustan Zinc Ltd. We find no reason to take a different view in this case. Accordingly, we hold that the respondent is entitled to CENVAT credit to the extent the inputs are used for production of electricity which is transferred free of cost to its sister unit.

13. Accordingly, the appeal filed by the Revenue is rejected and the impugned order is upheld. The Miscellaneous application also stands disposed of."

10. In view of the discussions made hereinabove, the appellants are entitled to cenvat credit on inputs and input services used for production of electricity which is transferred to its sister unit at Urse free of cost. The impugned order is therefore set aside and the appeal filed by the appellants is accordingly allowed.

(Pronounced in open Court on 24.04.2024)

(Ajay Sharma)
Member (Judicial)

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