(2022) 02 CESTAT CK 0011

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No. 52867 Of 2019

M/s. Rajram Maize Products Vs Commissioner Of Central Goods And Service Tax, Excise And Customs??

Date of Decision : 10-02-2022

Acts Referred:

Central Excise Tariff Act, 1985 — Chapter 11, 17, 35
Cenvat Credit Rules, 2004 — Rule 2(l), 2(k), 14, 15(2)
Central Excise Act, 1944 — Section 11AB, 11A(4), 11AA, 11AC

Citation : (2022) 02 CESTAT CK 0011

Hon'ble Judges : Anil Choudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The issue in this appeal is whether or not the input service credit availed for the unit – for the purpose of repair and maintenance to Captive Wind Mill of the appellant located far from the appellants' factory, situated at Surajpur Tehsil at Ratlam, Chittor Section, is admissible.

2. The brief facts of the case are that the appellant is engaged in the manufacture & clearance of excisable goods falling under Chapter 17, 35 and 11 of Central Excise Tariff Act, 1985. The appellant are having a captive wind power plant at Sujapur, Tahsil Jawra, Distt.-Ratlam (M.P.). The electricity generated from the said power plant was transmitted /given to Western Grid and thereafter the appellant received electricity from Western Grid at its factory at Rajnandgaon for its manufacturing purpose. They availed the cenvat credit amounting to Rs.6,58,383/-(including cess) during the period 2012-13 to October, 2015 on the Service Tax paid on the amount incurred as repair & maintenance expenses towards the said Wind Power Plant at Surajpur, Tehsil-Jarwa, Distt.-Ratlam (M.P.), which is situated beyond their actual /declared place of removal i.e. factory gate (situated at Village-Mohad-Bothipar, Arjunda Road, Rajnandgaon (C.G.), and hence appeared to be not covered in the definition of input service as laid down in Rule 2(l) of the Cenvat Credit Rules, 2004. Further, the goods for which the said services have been taken/used, were not used in the factory premises

registered with the Department at Mohad-Bothipar, Arjunda Road, Rajnandgaon for manufacturing of their final product, and hence are not covered in the definition of 'inputs' as laid down in Rule 2(k) of the Cenvat Credit Rules, 2004.

3. Accordingly, a show cause notice dated 21.06.2016 was issued to the appellant for disallowance of inadmissible cenvat credit of Rs.6,58,383/- (including cess) and its recovery, along with levy of interest at appropriate rate under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A(4) and 11 AB/11AA of the Central Excise Act, 1944. Penalty under Rule 15(2) of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944 was also proposed to be imposed upon the appellant. However, the said demand was dropped by the Asstt. Commissioner, Central Excise Division-1, Bhilai vide order-in-original dated 21.12.2016, allowing the said credit.

4. Aggrieved with the said order of the Adjudicating Authority, the Department had preferred an appeal before the Commissioner (Appeals), Raipur. The Commissioner (Appeals) vide order-in-appeal dated 13.04.2018 had remanded the matter back to the Adjudicating Authority with the direction to verify / examine as to whether the appellant's wind power plant at Surajpur (M.P.) and the factory at Rajnandgaon (C.G.), bear the same name and belong to the same owner, and whether the electricity transmitted through the grid in M.P. was received in the manufacture of excisable final goods at the appellant's factory at Rajnandgaon (C.G.). In the 2nd round, pursuant to remand to the Asstt. Commissioner vide order-in-original dated 30.01.2019 disallowed the cenvat credit amounting to Rs.6,58,383/- (including cess) and ordered for its recovery under Rule 14 read with Section 11A(4) of the Act along with interest under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11 AB/11 AA of the Central Excise Act, 1944. The Adjudicating Authority has also imposed penalty of Rs.6,58,383/- under Rule 15 (2) of the Cenvat Credit Rules, 2004 read with Section 11 AC of the Central Excise Act, 1944.

5. Being aggrieved, the appellant preferred appeal before the Commissioner (Appeals), who vide impugned order-in-appeal no.BHO-EXCUS-002-APP-021-19-20 dated 10.06.2019 upheld the order-in-original dated 30.01.2019 and dismissed the appeal. It has been, inter alia, held that the wind mill and the manufacturing unit are two independent units of the appellant. Further, it is held that under the Wheeling Dealing Agreement, transfer of electricity in the western grid of power generated at the wind mill and thereafter, drawing the same power at the factory at Rajnandgaon, is an agreement between two different companies amounting to sale at the point of wind mill and re-purchase at the factory, in the ratio of percentage mutually agreed in terms of the agreement. Further, reliance was placed on the fact that the appellant has a surplus or profit from the Wind Power Division.

6. Reliance was also placed on the ruling of the Single Member Bench in the case of Rajhans Metals Pvt. Ltd. Vs. CCE– 2007-TIOL-1491- (CESTAT-Ahmedabad), wherein under the similar facts, manufacturing unit was situated at Jamnagar

and Wind Mill was situated about 100 km away at Karunga. It was held that cenvat credit is not available.

7. Being aggrieved, the appellant preferred appeal before this Tribunal.

8. Ld. Counsel for the appellant urges that the Appellate Commissioner vide order-in-appeal dated 10.06.2019 has erred in upholding the order-in-original dated 30.01.2019 and the same is liable to be set aside.

9. Further, in support of this contention, he relies on the following judgements of the Tribunal :-

(i) M/s.RSWM Ltd. (Fabric Division) in Appeal No.2900 of 2011 (SM) vide Final Order No.53190 of 2014 dated 07.08.2014;

(ii) CCE, Nagpur Vs. Ultratech Cement Ltd. -2010 (20) STR 683 (T-Mumbai)

(iii) CCE, Nagpur Vs. Ultratech Cement Ltd. – 2011 (21) STR 297 (T-Mumbai).

(iv) Rangammal Steels & Malleabls - 2009 (15) STR 197 (T-Chennai)

(v) Vikram Cement -2006 (194) ELT 3 (SC) 2006-TIOL-04-SC-CX-LB

10. Ld. Counsel further urges that the ruling of the Single Member Bench in Rajhans Metals Pvt. Ltd.(supra) is bad and not a good law as it has not considered the precedent rulings of Bombay High Court in the case of Ultra Tech Cement Ltd. and also the ruling of the Hon'ble Supreme Court in the case of Vikram Cement Vs. CCE (supra), wherein, it has been held that cenvat credit on explosives used for blasting mines to produce lime stone for use in the factory for the manufacture of cement/clinker situated at distance away from the mines, could not be denied on the ground that they were not used as inputs within the factory. Accordingly, he prays for allowing their appeal with consequential benefits. He also urges that in the facts and circumstances, the extended period of limitation is not available to the Revenue as the appellant had informed the Revenue of its intention to take cenvat credit with respect to the inputs and input services received at the wind mill, as early as by letters dated 28.05.10 and 26.08.10. It is further urged that even in the internal audit by the departmental officers of each year, the department never raised any objection with regard to the cenvat credit taken, which is disputed herein.

11. He, therefore, prays for setting aside the impugned order and for allowing their appeal with consequential benefits.

12. Ld. Authorised Representative for the respondent/Department relies upon the impugned order.

13. Having considered the rival contentions, I find that the issue herein is no longer res integra and has been decided in favour of the appellant /assessee by the law laid down by the Hon'ble Supreme Court in the case of Vikram Cement (supra), wherein the Hon'ble Supreme Court has upheld the allowability of the cenvat credit on the inputs or input sevices received outside the factory at the

captive mines. I find that admittedly, in the facts of the present case, the wind mill is a captive unit of the appellant. Admittedly, the appellant have generated power at the wind mill and transferred the power under Wheeling Dealing Agreement in the Western Grid, and thereafter, has drawn power at its factory at Rajnandgaon. Further, from the Bill raised by Western Grid, it is evident that the appellant has been given credit of the units transferred to the grid at the Wind Mill and thereafter, have drawn power at Factory, they were required to make payment and if they have drawn excess power, and if they have drawn some less power, then they were entitled to such credit as per the agreement. The agreement also provides for payment of Wheeling Dealing charges to western grid by the appellant. Thus, the order of the court below is also contrary to the facts and there is clear mis-reading of the agreement between the appellant and the Western Grid.

14. I find that in the similar facts and circumstances, in the appellant's own case vide Final Order No.53190/2014 dated 7.8.2014, the Coordinate Bench of this Tribunal has allowed cenvat credit, wherein the dispute was for the cenvat credit for transport expenses of coal for the use in the captive power plant (located at distance from the factory).

15. In view of my findings, I allow this appeal and set aside the impugned order. As the appeal is allowed on merits, the issue of limitation is left open. The appellant shall be entitled to consequential benefits in accordance with law.

[Order pronounced on 10.02.2022].