
(2023) 04 CESTAT CK 0016

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Excise Appeal No.41327 Of 2013

M/s. Vignesh Alloys Pvt. Ltd

APPELLANT

Vs

Commissioner Of GST & Central Excise

RESPONDENT

Date of Decision : 06-04-2023

Acts Referred:

Cenvat Credit Rules, 2004 — 2, 2(ij)(i), 8

Citation : (2023) 04 CESTAT CK 0016

Hon'ble Judges : Sulekha Beevi C.S., Member (J), Ajit Kumar, Member (T)

Bench : Division Bench

Advocate : R. Balagopal, G. Anandalakshmi

Final Decision : Allowed

Judgement

Ajit Kumar, Member (T)

1. This appeal is filed by M/s. Vignesh Alloys Pvt. Ltd. against Order in Appeal No. 80/2013 dated 19.3.2013.

2. The facts of the case are that the appellant is engaged in the manufacture of Aluminium Alloy Ingots falling under Central Excise Tariff Heading 76012010 of the CETA, 1985. They have imported inputs i.e. 'aluminium scrap' and directed the inputs 'as such' to some dealers who in-turn have resold the aluminium scrap to the appellant. The dealer has also not acted as a 'first stage dealer' as defined in terms of Rule 2(ij)(i) of CENVAT Credit Rules, 2004, therefore the availment of credit by the appellant based on the said dealers invoices are ineligible. During the period September 2010, the appellant has availed credit on the resold aluminium scrap amounting to Rs.26,22,870/- which appeared ineligible to the original authority. He has after due process of law gone ahead to confirm the recovery of CENVAT credit along with interest and imposed penalty. Aggrieved by such order, the appellant has taken up the matter in appeal. The learned Commissioner (Appeals) has found that the appellant has purchased goods from a dealer who has not received the scrap directly from the manufacturer or import

of aluminium scrap but has received the same from the manufacturer who has imported the goods for further use in the manufacture of ingots. Therefore, the availment of credit by the appellant based on dealer's invoices are ineligible in terms of Rule 2(ij)(i) of CENVAT Credit Rules, 2004 and went on to reject the appeal. Aggrieved by such order, the appellant is before us.

3. Shri R. Balagopal, consultant who appeared on behalf of the appellant stated that the legal issues are covered by Tribunal's Final Order No. 41291/2018 dated 13.4.2018 in their own case. He requested that the appeal may be allowed with consequential relief.

4. Smt. G. Anandalakshmi, learned AR appeared on behalf of Revenue. She has reiterated the points given in the impugned order.

5. We find that the matter is identical to the one involved in Final Order No. 41291/2018 dated 13.4.2018 cited by the appellant. The Tribunal at para 5 has held as under:-

"5. For better appreciation, the relevant provisions of law are extracted as under :

Rule 2 CCR 2004

(ij) "first stage dealer" means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice ; or

(ii) An importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice.

"Rule 8 CER 2002 - Explanation for the purposes of this rule, the expressions duty or duty of excise shall also include the amount payable in terms of the CENVAT Credit Rules, 2004"

The case brings out that the appellants are not the manufacturer of Aluminium scrap and they have only imported the scrap for manufacture of Aluminium ingots. They cleared certain quantity of scrap 'as such' under Rule 3 (5) of CCR 2004 to a first stage dealer who availed credit on the same and thereafter resold to the appellant who availed credit on the said goods being inputs. According to department, the first stage dealer cannot avail credit on the aluminium scrap as the goods having removed as such. We do not find any sum or substance in such a proposition. For the purpose of Rule 2, the dealer is one who purchases 'goods' from the manufacturer, and is not limited to somebody who only purchases goods 'manufactured' by the manufacturer. We find that the whole SCN does not have any legal basis. The impugned order is set aside. Appeal is allowed with consequential relief, if any, as per law."

6. We agree with the same.

7. In light of the above discussions, the impugned order is set aside and the appeal is allowed with consequential relief, if any, as per law.