(2022) 09 CAL CK 0048

Calcutta High Court

Case No: IA NO. GA/01/2022, CEXA No. 16 Of 2022

Commissioner Of CGST And CX, Bolpur Commissionerate		APPELLANT
	Vs	
M/S. Shyam Steel Industries Limited		RESPONDENT

Date of Decision: Sept. 5, 2022

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 2(a), 2(k), 3, 3(1)(i), 3(1)(vii), 3(7), 4, 14
- Central Excise Act, 1944 - Section 35G
- Customs Tariff Act, 1975 - Section 3

Hon'ble Judges: T. S. Sivagnanam, J; Hiranmay Bhattacharyya, J

Bench: Division Bench

Advocate: Vipul Kundalia, Tapan Bhanja, Abhratosh Majumdar, Rahul Dhanuka

Final Decision: Dismissed

Judgement

1. This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 is directed against the final order No. 75858/2021 dated

21.12.2021 passed by the Customs Excise and Service Tax, Appellate Tribunal, Kolkata, (tribunal) in Excise Appeal No. 79639 of 2018. The revenue

has raised the following substantial questions of law for consideration:

Whether the respondent is eligible to avail Cenvat Credit availed in respect of 1%/2% (concessional rate) Additional Duty of Customs

(CVD) paid on imported coal in terms of Notification No. 12/2012-cus dated 17.03.2012 and 12/2013-Cus dated 01.03.2013, in view of

restriction for availing Cenvat Credit in terms of the Notification No. 12/2012-CE dated 17.03.2012 (sl. No. 67 and condition no. 25)?

Whether the Learned Tribunal has misdirected itself by allowing the appeal of the respondent without appreciating that if no credit of

excise duty at the concessional rate of 1% is available under the proviso to Rule 3(1)(i) of the Cenvat Credit Rules, the credit of CVD at the

rate of 1%/2% is also be restricted?

Whether the restricted as prescribed in respect of duty of excise in the Notification No. 1/2011 CE dated 01.03.2011 and in Notification

No. 12/2012 CE dated 17.03.2012 read with Rule 3 of the Cenvat Credit Rules, 2004 is applicable to the countervailing duty?

2. We have heard Mr. Vipul Kundalia, learned Senior Standing Counsel assisted by Mr. Tapan Bhanja, learned advocate for the appellants and Mr.

Abhratosh Majumder, learned Senior Advocate assisted by Mr. Rahul Dhanuka advocates for the respondent.

3. The respondent assessee is engaged in the manufacture of Sponge Iron, Billet, TMT Bars and the principal inputs used in the manufacture of final

products are Pig Iron, Sponge Iron and Scrap. The department conducted an audit for the period 2013-2014. Pursuant to such audit, show cause

notice dated 03.03.2016 was issued proposing to reverse the CENVAT Credit and also impose penalty and levy interest. The allegation was that the

assessee contravened the provisions of the Rule 2(a) and 2(k) of the CENVAT Credit Rules 2004, read with Rule 3 and 4 of the CENVAT Credit

Rules, 2004 by mis-declaring the goods as inputs and by deliberately suppressing the facts of taking the inadmissible input credit the intent to evade

payment of duty. The assessee objected to the proposal made in the notice by submitting a reply which did not find favour with the adjudicating

authority and accordingly the order came to be passed on 10.03.2017 disallowing the CENVAT Credit and order of recovery of the same in terms of

the Rule 14 of the said Rules. Aggrieved by such order, the assessee preferred appeal before the Commissioner of CGST and Central Excise

(Appeal), Siliguri Commissioner (Appeals). The said appeal was partly allowed by order dated 18.06.2018. However, the reverse of the CENVAT

Credit, recovery of interest and penalty was affirmed. Aggrieved by such order, the assessee preferred appeal before the learned Tribunal. The

tribunal by the impugned order dated 21.12.2021 has allowed the appeal. Aggrieved by the same, the revenue has preferred the present appeal.

4. The question which falls for consideration in this appeal is whether the assessee is eligible to avail CENVAT Credit availed in respect of 1 % or 2

% (concessional rate) Additional duty of Customs (CVD)paid on imported coal in terms of Notification No. 12/2012-Cus. dated 17.03.2012 and

Notification No. 12/2013-Cus. dated 01.03.2013 and as to whether there is any restriction for availing CENVAT Credit in terms of the said

notification particularly as mentioned in Serial No. 67, Condition No. 25.

5. The case of the revenue is that Rule 3(1)(i) of the CENVAT Credit Rules, 2004 provides that a manufacture or producer of final products or a

provider of taxable service shall be allowed to take credit (CENVAT Credit) of the duty of excise specified in the first schedule to the Excise Tariff

Act leviable under the Excise Act provided that CENVAT Credit of such duty of excise shall not be allowed to be taken when paid on any goods

specified in Serial Nos. 67 and 128 in respect of which the benefit of an exemption under Notification 12-2012-CE dated 17.03.2012 is availed. It is

submitted that the adjudicating authority took note of the dictionary meaning of the word â€œequivalentâ€ to mean a thing equal to another in value or

measure or force or an effect or significance and the word â€œequivalentâ€ occurring in sub-Rule (vii) of Rule 3 of the CENVAT Credit Rules, 2004

would indicate that countervailing duty (CVD) is equal to duty of excise in all respects and accordingly all the conditions prevailing on duty of excise is

very much applicable to CVD though they are collected under different statutes but are same in respect of their nature and the purpose for levy.

Further it is contended that the notifications dated 01.03.2011 and 17.03.2012 read with Rule 3 is applicable to CVD and if any other interpretation is

given it will jeopardise the very purpose of imposition of countervailing duty.

6. The learned tribunal while allowing the appeal pointed out that there is no restrictions in the notifications dated 17.03.2012 and 01.03.2013 unlike

Serial No. 67 of Central Excise Notification No. 12 of 2012 dated 17.03.2012 in so far as the availment of CENVAT Credit on coal is concerned.

Further it was held that the credit of CVD is available under Rule 3 (1) (vii) of the Rules and the proviso to Rule 3 (1) (i) restricting credit in case of

coal cleared under Excise Notification No. 12/2012 dated 17.03.2012 cannot impliedly be read into when the rate of CVD has not been followed from

the excise notification but as generally applied the rate on its opinion. Thus, the tribunal held that there is no room for any intendment in taxing statutes

and they require strict interpretation. Further the tribunal held that even if generally applied rate of CVD which was 1 % up to 28.02.2013 and 2 %

thereafter under the customs notification and the concessional excise duty read on domestically manufacture goods 1 % without CENVAT excise

notification where not uniform and in any event the expression â€œequivalentâ€ appearing in Rule 3 (1) (vii) of the Rules for modification of CVD

could not be restricted including the tariff rate of excise duty of 6 % on the domestically manufacture goods. The tribunal also referred to one of its

decisions in the case of Jaypee Sidhi Cement Plant Versus CCGST, Customs and Excise, Jabalpur 2019 (369) ELT 1673.

7. The Learned Senior Advocate appearing for the respondent assessee to explain meaning of the word â€œequivalentâ€ referred to the decision in

Chandrakala Trivedi Versus State of Rajasthan and Others (2012) 3 SCC 129 wherein it was held that the said word must be given a reasonable

meaning and by using the expression â€œequivalentâ€ one means that there are some degree of flexibility or adjustments which do not allow this rated

requirements; there has to be some difference between what is equivalent and what Â is exact. The circular issued by CBEC in Circular No.

41/2013-Cus dated 21.10.2013 is also of relevance to the case on hand. The necessity to issue the circular arose as doubt was raised whether an

importer, while availing the â€œBasic Customs Dutyâ€ (BCD) Exemption at 10 % under FTA can simultaneously avail of the concessional

countervailing duty (CVD) at 2 % as per notification No. 12/2012-Customs or he has to pay the CVD at 6 %, which is rate of excise duty applicable

on Steam Coal when CENVAT facility has not been availed. The issue was clarified on the following terms:-

v In the present case, the excise duty applicable on Steam Coal is 6%, if CENVAT benefit is availed of an 1% if the CENVAT benefit is not

availed of, Normally, Steam Coal will suffer 6% CVD, as the condition of non-availment of cenvat benefit cannot be satisfied in respect

of imported goods. However, in the Budget 2013-14, as a conscious policy decision, it was decided to levy 2% CVD both on steam coal

and bituminous coal. This is the general applied rate of CVD on all imports of steam coal and bituminous coal regardless of the excise

duty leviable on like domestic coal. No such condition has been laid down that an importer cannot avail of this concessional CVD of 2%

is he has availed of the concessional BCD on steam coal under another notification.

v It is therefore clarified that an importer while availing of BCD exemption on steam coal under FTA notification No. 46/2011-Cus can

simultaneously avail of concessional CVD at 2% under notification No. 12/2012-Cus.

8. That apart, we find that the Regional Advisory Committee for Hyderabad zone which is the Committee consisting of 10 Members, 5 from the

department who are all in the rank of Commissioners/Joint Commissioners and 5 Members representing the industry considered this issue. The

question which has arisen in the case on hand was subject matter of discussion in Point No. 1 and in the Minutes of the Meeting of the Committee

dated 09.02.2015 it was decided as follows:-

Since the subject goods were levied to reduced rate of 2% CVD on their importation in terms of Section 3 of Customs Tariff Act, 1975 read

with Notification issued therein i.e. under Notification No. 12/2012-Cus. Dated 17.03.2013 (and not under Notification No. 1/2011 CE)

which was not excluded from the purview of Rule 3 of Cenvat Credit Rules, 2004. It appears that the Cenvat Credit of CVD paid on importer

coal (i.e. 2% adv.) under Notification No. 12/2012-Cus. Dated 17.03.2013 is eligible for credit.

9. Identical issue has been decided in favour of the assessee by the tribunal in Hindalco Industries Limited Versus GST, Bhopal 2018 (363) ELT 1085

(Tri.-Del), holding that taking into consideration Notification No. 12/2012-Cus there is no bar for availment of CENVAT Credit in terms of the Rule

3(7) where duty paid under Notification No. 12/2012-Cus and CENVAT Credit cannot be denied. Identical view was taken by the tribunal in CCE

and ST, Surat-I Versus M/s Aarti Industries Limited 2019(3) TMI 240-CESTAT Ahmedabad, M/s. Asahi Songwon Colors Limited Versus CCE &

ST, Vadodara 2018(9) TMI 159- CESTAT Ahmedabad, Commissioner of Central Excise, Customs & CGST, Jaipur-I & Ors, Versus M/s. Shree

Cement Limited 2022 (7) TMI 978- CESTAT New Delhi, SRF Limited Versus Commissioner of Customs, Chennai 2015 (318) ELT 607 (SC), and

M/s. Tamil Nadu Newsprint & Papers Limited Versus Commissioner of GST & Central Excise, Tiruchirappalli 2021 (10) TMI 13-CESTAT Chennai.

The above decisions rendered by the tribunal have not been shown to have been reversed or modified by the High Court.

10. In the light of the above discussions, we are of the considered view that the tribunal rightly granted relief in favour of the respondent assessee and

the order does not suffer from any error warranting interference.

11. In the result, the appeal fails and is dismissed and the substantial questions of law are answered against the revenue.