(2024) 10 CESTAT CK 0029

Customs, Excise And Service Tax Appellate, New Delhi

Case No: Excise Appeal No.54821 of 2023

M/s. Steel Authority of India Limited		APPELLANT
	Vs	
Commissioner of Central GST & Central Excise (Audit)		RESPONDENT

Date of Decision: Oct. 24, 2024

Acts Referred:

- Cenvat Credit Rules, 2004 - Rule 3(5B)

Hon'ble Judges: Dr. Rachna Gupta, Member (J)

Bench: Single Bench

Advocate: Dhruv Tiwari, Kuldeep Rawat

Final Decision: Allowed

Judgement

Dr. Rachna Gupta, J

1. The appellant herein is engaged in manufacture of Billets, Slabs, angles, TMT Bar, Channels etc. They were also availing the facility of Cenvat

Credit on inputs, capital goods and input services as provided under Cenvat Credit Rules, 2004 (hereinafter referred as CCR 2004). While auditing the

records of the appellant, it was pointed out by the auditors that the appellant has made the provision of Rs.20,07,37,034/- against the stock value of

Rs.28,14,81,491/- in the Financial Year 2016 & 17, for non-moving/ obsolete /surplus inventories on which the Cenvat Credit was not reversed by the

appellant as is required under rule 3 (5B) of CCR 2004. Though the appellant contended that the said rule does not apply but no documentary evidence

could be produced by the appellant. Resultantly, vide SCN No. 16827 dated 16.12.2020 Cenvat Credit amounting to Rs.3,30,81,463/- was proposed to

be reversed alongwith the interest and the penalty of the same amount. While adjudicating the said proposal, the original adjudicating authority vide

Order No.29/2022 dated 21.12.2022 has ordered the partial recovery for the sum of Rs.7,86,240/- by dropping the balance demand of Rs.3,22,95,223/-

alongwith the interest. Penalty of same amount of Rs.7,86,240/- has been imposed upon the appellant. Still being aggrieved the appellant is before this

Tribunal.

2. I have heard Mr. Dhruv Tiwari, ld. Counsel for the appellant and Mr. Kuldeep Rawat, Authorised Representative for the Department.

3. Ld. Counsel for the appellant has mentioned that the appellant procures various raw-material; store and spare the same to undertake its

manufacturing activity. In accordance with the generally accepted accounting principle, the appellant maintains an â€˜Accounting Manualâ€™ which

records the accounting practices followed by it for maintaining the books of account, wherein the provision has been made in respect of slow moving/

non-moving inventory. It is impressed upon that the said entry in the books of accounts does not change the value of inventory in any manner. The

entry is otherwise been made as per the Internal Accounting Manual. The values of these entries are being reviewed on regular basis and the

provisions are renewed on yearly basis in accordance with the utilization of the inventories. Department has therefore, taken a wrong presumption that

these entries amounts to writing off the inventory. SCN based on such assumption and the order passed in furtherance thereof, both are liable to be

set aside.

4. Based on these submissions, ld. Counsel has mentioned that appellant was not required to reverse the Cenvat Credit as the value of inventory was

never written off. The Department has wrongly invoked rule 3 (5B) of CCR 2004. Invocation of extended period while issuing the impugned Show

Cause Notice has also been objected for want of any evidence qua suppression of any fact on part of the appellant while relying upon the decision in

the case of Commissioner of Central Excise, Chennaiâ€"I versus Chennai Petroleum Corporation Ltd. reported in 2007 (211) E.L.T. 193 (S.C.) &

Rajasthan Tourism Development Corporation Ltd. Vs. CCE, Jaipur-I reported in 2017 (5) G.S.T.L. 169 (Tri.-Del.). The order is accordingly prayed to

be set aside and appeal is prayed to be allowed.

5. While rebutting these submissions, ld. D.R. has submitted that the appellant in their balance sheet have declared the value for an amount of

Rs.2814.81 Lakhs and they made the provision for Rs.2007.37 Lakhs for non-moving /obsolete/ surplus inventory and also created a provision of

Rs.2007.37 Lakhs for the same. However they had not paid any amount for reversal of Cenvat Credit taken towards such credit. Hence Rule 3 (5 B)

of CCR 2004 has rightly been invoked. The Cenvat Credit is required to be written-off when the inventory is declared as obsolete. By not reversing

the said Cenvat Credit and not revealing it to the Department about the provisions of writing off their inventory, the appellants have rightly been held

responsible for suppressing the relevant facts. The extended period has rightly been invoked.

6. Ld. D.R. has relied upon the decision of this Tribunal Chennai Bench in the case of M/s. Flowserve India Pvt. Ltd. vs. Commissioner of GST and

CE reported in 2018 (12) TMI 723 CESTAT-Chennai. With these submissions and impressing upon no infirmity in the order under challenge (OIO

dated 21.12.2022) appeal is prayed to be dismissed.

7. Having heard the parties at length and perusing the record I observe that the question to be decided for adjudication of present appeal is:

â€œWhether the appellants are required to reverse the credit availed on the inputs alleged to have been written off in their books of account in

accordance of rule 3 (5B) of CCR.â€

For this purpose I have perused the rule. It reads as follows:-

Rule 3(5B): If the value of any input or capital goods before being put to use on which CENVAT credit has been taken is written off fully

or partially or where any provision to write of fully or partially has been made in the books of account, the manufacturer or service

provider is required to pay an amount equivalent to the CENVAT credit taken in respect of the said input or capital goods.

8. On a plain reading of the said Rule it is clear that in the event the value of any input or capital goods before being put to use on which Cenvat credit

has been availed are written off fully or partially or any provision has been made to write off those fully or partially than the manufacturer or service

provider are required to reverse/pay Cenvat credit availed on such inputs or capital goods. Thus it is clear that provisions of rule 3 (5B) CCR are

applicable only when the value of asset and or inventory is written off fully or partially, or wherein any specific provision to write-off fully or partially

has been made in the books of accounts.

9. In the present case from the very beginning the appellant have submitted that they have only written down the value of the raw materials in their

books of account and has not written off the value fully or partially. Also, the claim of the appellant are that all these raw materials are still available in

their factory and are in usable conditions; the value is written down as per the accounting principle and since the credit availed is on inputs, therefore,

under the CCR, 2004, there is no bar in taking depreciation benefit' under Income-tax Act, 1961. Further, I find that there is no evidence to the effect

that the inputs whose value had been written down had been removed from the factory, thus, reducing the value of the raw materials. Keeping in view

the accounting principles and Income-tax benefit, if any, it cannot be construed that the value of the inputs are written off from the books of account

and are not usable resulting into invoking of Rule 3(5B) of Cenvat Credit Rules, 2004.

10. I also observe that the appellant has created a general provision for slow/non-moving inventory and have taken the stand that they have not written

off the inventory from the asset account in actuality the provision has been made by appropriation in the profit and loss account without writing off any

amount/ value from the asset / inventory account. I observe that there is a difference between writing off inputs vis-Ã -vis provision of slow moving

inventory the goods continued to lie in the appellantâ€™s factory and gradually used in manufacture of dutiable final products such goods cannot be

called as the inventory written off. I draw my support from the decision of Honâ€™ble Supreme Court in the case of Reliance Energy Ltd. vs.

Maharashtra State Road Development Corporation reported as 2007 (8) SCC 1 wherein it has been observed that the concept of provision for

doubtful debts is different from the concept of write off. The provision for â€˜doubtful debtsâ€™ cannot be equated to â€˜write offâ€™. Honâ€™ble

Gujarat High Court also in the case of CCE vs. Ingersoll, Rand India Ltd. reported as 2014 (300) ELT 347 has held that writing down the inputs for

Income-tax purposes cannot be equated with writing-off the inputs under Rule 3 (5B) of CCR.

11. I further observe that there is no denial by the Department about appellant to have kept the inventory in their accounts at full value and upon

consumption in regular course of business, the cost of inventory is booked at full value itself. There is also no denial to the fact that the non/slow

moving inventory has at certain stage being used by the appellant in its manufacturing process. Hence the inventory which had not become obsolete

cannot be called as the entry written off. As already observed above Rule 3(5B) CCR is invokable vis-Ã -vis written off entry only. I hold that the

said rule has wrongly been invoked by the Department.

12. This Tribunal also in the case of Hindustan Zinc Ltd. vs. Commissioner of CGST, Udaipur reported as 2021 (8) TMI 935â€" CESTAT New Delhi

and in another case titled as Takata India Pvt. Ltd. vs. CCE, Alwar reported as 2022 (4) TMI 1359 (Tri. Del.) has been held that since the assessee

has made only a general provision and the department has not been able to identify the details of inventory or assets for which the provision has been

made as to whether those inventories have become obsolete, I hold that the demand confirmed invoking Rule 3(5B) in the circumstances is not

sustainable. There is also no denial to the fact that in case where such non/slow moving inventory had become obsolete the appellant had already

reversed the credit.

13. With respect to invocation of extended period of limitation I observe that the provision in the records of the appellant (balance-sheet/ P & L

accounts) was the activity in accordance of normal accounting practice. Appellant is found to have committed nothing which may amount to evasion

of tax. His defence since the stage of replying to the show cause notice has been apparently clearer about non-invokability of rule 3 (5B) of CCR, but

the same has not been considered by the authority below.

14. Resultantly, I do not find any evidence on record about any punitive act of the appellant to evade tax. Hence I hold that there is no evidence for

the invocation of extended period. Show Cause Notice (SCN) therefore is held to be barred by the period of limitation. With these observations on

merits of this case and also about technical issue of limitation, I hereby set aside the order under challenge arising out of said SCN. Consequent

thereto the appeal is hereby allowed.

[Pronounced in the open Court on 24/10/2024]