CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Service Tax Appeal No. 2728 of 2010

(Arising out of Order-in-Appeal No. 195/2010/CUS(B) dated 29.10.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Mineral Enterprises Ltd.
300/1B, 16th Cross,
Sadashiva Nagar,
Bangalore – 560 080. Appellant(s)

VERSUS

The Commissioner of Customs,
Central Revenue Building,
P.B.No.5400,
Queens Road,
Bangalore – 560 001. Respondent(s)

WITH

Service Tax Appeal No. 2729 of 2010

(Arising out of Order-in-Appeal No. 186/2010/CUS(B) dated 30.09.2010 passed by the Commissioner of Customs (Appeals), Bangalore.)

M/s. Mineral Enterprises Ltd.
300/1B, 16th Cross,
Sadashiva Nagar,
Bangalore – 560 080. Appellant(s)

VERSUS

The Commissioner of Customs,
Central Revenue Building,
P.B.No.5400,
Queens Road,
Bangalore – 560 001. Respondent(s)

APPEARANCE:

Shri, N. Anand Advocate, for the Appellant

Shri K.A. Jathin, Authorised Representative for the Respondent

CORAM: HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20638 - 20639 /2024

DATE OF HEARING: 03.07.2024
DATE OF DECISION: 14.08.2024

PER : R BHAGYA DEVI

These appeals are against Order-in-Appeal No.186/2010 dated 30.09.2010 and Order-in-Appeal No. 195/2010/CUS(B) dated 29.10.2010. Since the issue involved in both the appeals are same, they are taken up together for hearing and disposal.

2. Briefly stated the facts are that the appellant, M/s. Mineral Enterprises Ltd., are engaged in the extraction of iron ore from the mines falling Chapter 2601 of Central Excise Tariff Act (CETA), 1985. They had filed six refund claims under Notification No.5/2006-CE (NT) dated 14.03.2006 issued under Rule 5 of CENVAT Credit Rules, 2004. The appellant had exported iron ore fines and lumps after undertaking processes like mining, processing, crushing, grinding, screening and washing. These processes were not considered as a manufacturing activity and hence, inputs utilised in the above goods which were exported were not eligible for refund. Hence, the refund claims were rejected which was upheld by the Commissioner (Appeals) in the impugned order No.186/2010 dated 30.09.2010 and No. 195/2010 dated 29.10.2010.

3. The learned counsel on behalf of the appellant submitted that the appellant is a 100% EOU engaged in the manufacture and export of iron ore lumps and fines classifiable under Chapter 2601 of the CETA, 1985. It is submitted that the process of extraction of iron ore amounts to manufacture of excisable goods in terms of Section 2(f) of the Central Excise Act, 1944. The appellant received various input services on which Service Tax was paid and availed CENVAT credit of the same in terms of Rule 2(l) of the CENVAT Credit Rules, 2004. Since there were no

Domestic Tariff Area (DTA) clearances and they undertook only exports, the CENVAT credit could not be utilised and hence, sought for the refund of unutilised CENVAT credit. It is also submitted that for the earlier period October 2006 to December 2007, the Commissioner (A) vide Order-in-Appeal No.138/2008 dated 31.10.2008 rejected their refund claims on the ground that the processes undertaken by them did not amount to manufacture. The above order was set aside by this Tribunal vide Final Order No.20489-20500/2017 dated 20.04.2017 which has attained finality. Since the present Order-in-Original relies on the Order-in-Appeal No.138/2008 dated 31.10.2008 which has been set aside by this Tribunal, the impugned order is not sustainable. He also relies on the decision of the Tribunal in the case of Bala Handlooms Exports Co. Pvt. Ltd. vs. CCE: 2008 (223) ELT 100 (Tri.-Chennai) and Stone Age Ltd. vs. CCE: 2016 (342) ELT 286 (Tri.-Del.) to substantiate his argument that in the context of export of goods, it was held that even if the final product is manufactured by the appellant does not amount to manufacture, the appellant is entitled to CENVAT credit and eligible for unutilised CENVAT credit.

4. The learned Authorised Representative (AR) reiterating the findings of the Commissioner (Appeals) submitted that the impugned order rightly held that the input service credit is not admissible as they are neither exporting the output services nor finished goods manufactured from dutiable inputs.

5. Heard both sides. The limited issue to be decided is whether: the appellant is eligible for the refund of unutilised CENVAT credit used in the goods that were exported during the period January 2008 to March 2009.

6. In Appeal No.ST/2729/2010, as seen from the Order-in-Original No.355/2009 dated 31.12.2009, the Original Authority

held that *"the said Appellate Authority vide OIA No.138/2008 disallowed the appeal of the claimant by relying on the decision in the case of …….. accordingly, the Appellate Authority dismissed the appeal of the claimant. Aggrieved by the aforesaid OIA, appeal was filed before Hon'ble CESTAT on 30.03.2009, which is pending and is not stayed. Respectfully following the findings of the Commissioner (Appeals) in the OIA No.138/2008 dated 31.10.2008 and the above decisions of the Hon'ble Supreme Court……., I hold that the activity carried out by the claimant does not amount to manufacture and the claimant is not entitled to take the credit of Service Tax paid on the aforesaid services and hence, the question of refund of Service Tax Credit availed by them does not arise."*

6.1 In appeal No. ST/2728/2010, the original authority vide Order-in-Original No.37/2010 dated 29.4.2010 has also relied on OIA No.138/2008 dated 31.12.2008 (referred above in para 6) to reject the refund claims.

7. Both the above Orders-in-Original were upheld by the Commissioner (A) in the impugned orders. As rightly argued by the appellant, the basis on which the original authority had rejected the refund claims vide Order-in-Appeal No.138/2008 dated 31.10.2008 now stands set aside by this Tribunal vide Final Order No.20489-20500/2017 dated 20.04.2017, wherein it was observed that:

> "6. After considering the submissions of both the sides and perusal of the material on record, I find that the adjudicating authority has allowed the refund on few input services and rejected the refund only for clearing and forwarding services; professional services; loading, screening and road laying; bank charges and commission paid to foreign agent for procuring export orders and the Department has not filed any appeal against the same. Further, I also find that in

the impugned order, the Commissioner (A) has gone beyond the show-cause notice as well as the grounds of appeal filed by the appellant. In fact, the Commissioner (A) has misconstrued the definition of mining activity and has wrongly held that it does not amount to manufacture whereas the mining activity amounts to manufacture and is an excisable goods within the meaning of Section 2(d) of Central Excise Act, 1944. Further, the definition of "input service" has been given very wide interpretation by various courts in the decisions cited supra. The expression in Rule 2(l) *"used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products from the place of removal, and includes……"* has not been properly appreciated by the lower authorities. Further, I also find that the CBEC vide Circular No.943/4/2011-CX has also clarified with regard to few services for which the CENVAT credit is permissible. Further, I also find that most of the input services on which the refund has been denied by the Commissioner (A) fall in the definition of "input services" has held in the decisions cited supra. Further, after following the ratio of various decisions cited supra, I am of the view that the case of the appellant is squarely covered by the various decisions cited above. I also find that in few appeals which are cited in the table, the assessee has not contested certain amount on account of not having sufficient document in their possession and to that extent I reject their refund claims. In view of my discussions above, all the appeals are allowed except the amount not claimed by assessee with consequential relief in any."

(Emphasis supplied)

7.1 Similarly vide Final Order No.22400-22406/2007 dated 8.10.2017 in the appellant's own case for the period October 2006 to September 2007, relying upon the above decision of this Tribunal, the impugned orders were set aside and allowed the refund claims filed by the appellant.

8. Taking into consideration the fact that the appellate order relied upon by the Original Authority have been set aside by this Tribunal holding that the mining activity amounts to manufacture and the input services were eligible, the refund claims filed by the appellant for the unutilised CENVAT credit is to be allowed. Accordingly, the impugned orders are set aside and the appeals are allowed with consequential relief, if any, as per law.

(Order pronounced in Open Court on 14.08.2024.)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

RV