IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL, CHENNAI

Excise Appeal No.42145 of 2014

(Arising out of Order in Appeal No. 134/2014 (M-III) dated 2.7.2014 passed by the Commissioner of Central Excise (Appeals), Chennai)

M/s. El Forge Ltd. **Appellant**
21-C, ARK Colony
Eldams Road, Alwarpet
Chennai – 600 018.

Vs.

Commissioner of GST & Central Excise **Respondent**
Chennai North Commissionerate
26/1, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

APPEARANCE:

Shri R. Parthasarathy, Consultant for the Appellant
Shri N. Satyanarayanan, Authorized Representative for the Respondent

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Hon'ble Shri M. Ajit Kumar, Member (Technical)

Final Order No. 41089/2024

Date of Hearing : 13.08.2024
Date of Decision: 20.08.2024

The above appeal is filed against Order in Appeal No. 134/2014 (M-III) dated 2.7.2014 passed by the Commissioner of Central Excise (Appeals), Chennai (impugned order).

2. Brief facts of the case are that the appellant, a manufacturer of steel forgings falling under Chapter 73 of the CETA, 1985, shifted their unit situated in Chrompet to another of their unit in Appur village during the period from July 2007 to November 2007. They ceased manufacturing activity at their Chrompet Unit in October 2007. The appellant requested permission vide their letter dated 24.10.2009 for

transfer of CENVAT credit available in their CENVAT credit account from Chrompet Unit to that of Appur unit. The authorities permitted transfer of balance of credit lying unutilized as on 31.10.2007 of Rs.3,64,704/- (Excise duty) and Rs.36,620/- (service tax) along with credit of Rs.16,334/- taken on capital goods during October 2007. Vide letter dated 14.2.2012, the department informed the appellant that the credit taken beyond October 2007 is not eligible for transfer as the unit at Chrompet had stopped production and was merged with Appur unit. An amount of Rs.12,44,192/- lying unutilized in CENVAT account was permitted to be transferred to Appur unit but the remaining amount of Rs.8,49,316/- was not permitted to be transferred for the reason that they involved service tax credits taken after the closure of operations in their Chrompet unit and that ER1 returns informing availment of such credits in November 2007 was filed after a lapse of one and a half year i.e. June 2009. Aggrieved by the said letter dated 14.2.2012, the appellant preferred appeal before the appellate authority. Vide the impugned order, the Appellate Authority rejected the appeal. Hence this appeal.

3. Shri R. Parthasarathy, learned consultant appeared for the appellant and Shri N. Satyanarayanan, learned Authorized Representative appeared for the respondent.

3.1 The Ld. Consultant for the appellant submitted that the order of the learned CCE(Appeals) is ex-facie wrong in his conclusion that the entire credit of Rs.8,49,316/- (for which credit were taken in Nov.2007) was input service tax. The said amount also included Rs.61,992/- for seven items of capital goods received between Jan.2007 and Nov.2007 in their Chrompet unit. No CENVAT credit could be taken at Chrompet

unit for the input services availed between Oct.2006 and Oct.2007, as there was a statutory restriction in availing credit for such input services, in the absence of appellants having failed to make the payment to the service providers. They could complete the payments to all service providers only in the fag end of Oct.2007 and as a result, the accumulated credit of service tax was taken in the month of Nov.2007. In the absence of any statutory time limit for availing CENVAT credit, the appellants' act of availing credit for input services, received in their Chrompet factory between Oct.2006 and Oct.2007, in the month of Nov.2007 was very much in order and the mere fact that there was no manufacturing activity in Chrompet division in the month of Nov.2007, should not have been a reason for denial of CENVAT credit for service taxes paid for various services provided when there were manufacturing activities in their Chrompet factory. The Ld. Counsel submitted that there was no stipulation that transfer of CENVAT credit and continuance of manufacturing activities should co exist. In support of the Appellant's contention that in respect of the credit taken in the month of Nov.2007, no time was applicable, he relied upon the following judgments wherein it was categorically held that CENVAT credit due to a manufacturer of final products cannot be denied on grounds of time limit.

1. Neon News Pvt. Ltd. Vs. CCE&ST, Agra 2019 (20) GSTL 24
2. Vijay Commercial Cooperative Bank Ltd. – 2019 (25) GSTL 447
3. India Potash Ltd. Vs. CGST, Meerut – 2019 (369) ELT 742
4. Voss Exotech Automotive P. Ltd. – 2016 (363) ELT 1141
5. Balakrishna Industries Ltd. – 2018 (335) ELT 559
6. Steel Authority of India Ltd. – 2013 (287) ELT 321

The Ld. Counsel stated that their substantive right of transferring the accumulated credit at their Chrompet unit should not have been curtailed on the flimsy ground of appellants taking credit in the month of Nov.2007 and also on the ground that the ER1 returns were belatedly filed. The appellants refer to and rely upon the following rulings:

a. ARR AAY products Pvt. Ltd. 2003 (157) ELT 40

b. Shreerama Multi Tech Ltd. 2007 (217) ELT 136

c. CCE, Pondicherry – 2008 (230) ELT 209 (Mad.)

The above ruling of Madras High Court, he stated, was affirmed by the Supreme Court 2009 (237) ELT A48 (SC). He prayed that the order of the Commissioner (Appeals) be set aside, to the extent it relates to the rejection of appellants request for transfer of credit for input services received during Oct.2006 to Oct.2007, in their Chrompet Unit.

3.2 The learned AR reiterated the points given in the impugned order and prayed that the order may be upheld.

4. I have gone through the appeal carefully and have heard the rival parties. I find that under the CENVAT scheme there is no one to one correlation between the inputs and the final product. During the impugned period there was no time limit during which credit had to be taken on duty paid documents. In the absence of any allegation of fraud or that the documents on which the credit was availed was not proper or that the inputs were not at all used for the manufacture of the final product, the credit cannot be denied. Procedural issues like the ER1 returns being belatedly filed etc. should not come in the way of substantial justice, when the law does not bar such a relief. In the

context, Justice V.R. Krishna Iyer speaking for a Division Bench in **State of Punjab & Anr. Vs. Shamlal Murari & Anr.** [(1976) 1 SCC 719] had observed succinctly,

> "8. …We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

5. In facts of the case as discussed, the impugned order approving the rejection of appellants request for transfer of credit as per letter C.No.IV/16/95/2003-RC dated 14/02/2012 of the Assistant Commissioner, Chrompet Division, is set aside and the appellants prayer allowed. The appellant is eligible for consequential relief, as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 20.08.2024)

(**M. AJIT KUMAR**)
Member (Technical)

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