

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
NEW DELHI**

PRINCIPAL BENCH Court No. IV

EXCISE APPEAL NO. 50115 of 2020

[Arising out of Order-in-Appeal No.288 (CRM) /CE/JPR/2019 dated 15.10.2019 passed by the Commissioner(Appeals), Central Excise and Central Goods and Service Tax, Jaipur (Raj)]

M/s. Surya Alumex

... APPELLANT

(Unit of Surya Irrigation Pvt Ltd.)
F-1089, Phase II,
RIICO Industrial Area, Bhiwadi
District Alwar, Rajasthan 301019.

VERSUS

**COMMISSIONER OF CENTRAL
GOODS AND SERVICE TAX**

... RESPONDENT

Block A, Surya Nagar,
Alwar 301001 (Raj)

APPEARANCE

Ms J Kainnat, Advocate for the Appellant
Shri P Juneja, Authorised Representatives for the Department

CORAM:

HON'BLE MRS RACHNA GUPTA, MEMBER (JUDICIAL)

**DATE OF HEARING : April 06, 2021
DATE OF DECISION : 10.06. 2021**

FINAL ORDER NO. 51562 / 2021

PER MS. RACHNA GUPTA

The present appeal has been filed by the appellant being aggrieved by the Order in Appeal No. 288/2019 dated 15.10.19.

The facts giving rise to the impugned appeal are as follows:

M/s. Surya Alumex is engaged in the manufacture of aluminium alloy ingot and aluminium dross. During the course of internal audit, and on scrutiny of the financial records for the year 2014-15 and 2015-16, it was observed that the appellant had purchased various capital goods during the year 2013-14 and 2014-15. Full invoice value including the Central Excise duty amount has been shown in the balance sheet for the year 2014-15 and the appellant had claimed depreciation of entire invoice value of capital goods as were purchased during the year 2013 -14. The appellant has also claimed 100% Cenvat Credit of capital goods on 31.07.2014. Vide show cause notice No. 2843 dated 22.06.2017, the department alleged that the appellant has taken the Cenvat credit of Rs. 7,45,626/- on the capital goods which were capitalised in the balance sheet at full invoice value inclusive of Excise duty and have also claimed depreciation thereupon. Accordingly, the Cenvat credit was proposed to be disallowed and to be recovered along with interest and proportionate penalty. The said proposal was rejected vide Order-in-Original No. 20/2018-19 dated 20.06.2018 and appeal was preferred before the Commissioner (Appeals) by the department which has been allowed vide the impugned order under challenge. Being aggrieved, the appellant is before this Tribunal.

2. I have heard Ms J Kainnat, learned Counsel appearing for the appellant and Shri P Juneja, learned Authorised Representative appearing for the department.

3. Learned Counsel for the appellant has impressed upon the findings in Order-in-Original wherein it is recorded as follows:

It is found that the assessee has reduced the value of capital goods by the Cenvat credit involved in the balance sheet of 2015-16. I find that though the assessee has initially claimed the depreciation under Income Tax Act as well as benefit of CENVAT Credit on capital goods but later surrendered the benefit of Income Tax Act in the year 2015-16. Hence, it cannot be said that they have availed both the benefits.

3.1 Learned Counsel has also relied upon the decision of Hon'ble Gujarat High Court in the case of **CCE vs. Nish Fibres** reported as [**2010 (257) ELT 81 (Guj)**] and the decision of Ahmadabad Bench of CESTAT in the case of **Multi Chem vs CCE** reported as [**2009 (246) ELT 263 (Tri-Chennai)**] and has prayed that the order of Commissioner (Appeals) to be set aside and appeal to be allowed.

4. Per contra learned Authorised Representative has impressed upon the finding in para 9 of the order under challenge. Appeal is prayed to be dismissed.

5. After hearing both the parties and perusing the record, it is observed and held as follows: Following are the admitted facts

- (i) that the appellant had purchased various capital goods during the year 2013-14 and 2014-15.

- (ii) The appellant claimed the depreciation on entire invoice value including the excise duty as well.
- (iii) 100% CENVAT Credit on these capital goods has also been availed on 31.7.2014.

6. The rectification of alleged availment has been made in the balance sheet for the 2015-16.

7. It is also observed that when the appellant was subsequently asked about the said adjustment to have been made in the balance sheet for the year 2015-16 and 14-15, the appellant did not respond nor submitted any revised balance sheet for the aforesaid period. In absence thereof, it actually remained unclear as to whether the double benefit claimed by the appellant i.e. 100% availment of Cenvat Credit on the capital goods purchased in the year 2013-14 and 2014-15 and also claiming depreciation thereupon has actually been surrendered by the appellant or not. Infact Rule 4(4) of CENVAT Credit Rules, 2004 do not permit CENVAT Credit in respect of part of value of capital which represents duty of amount on such capital goods or which the manufacturer or producer of output service claims as depreciation under section 32 of the Income Tax Act.

8. In view of the above facts and admission of the appellant, there is definite violation of said Rule by the appellant. The adjustment in the balance sheet of 2015-16 cannot be considered as reversion of the depreciation claimed in the balance sheet of the

year 2013-14 and 2014-15. Accordingly, I do not find any infirmity in the findings of the Commissioner (Appeals) where it has been held that the adjudicating authority has grossly erred in interpreting the provisions of Rule 4(4) of CENVAT Credit Rules, 2004. Once the full depreciation was claimed, the respondent could not claim availment of cenvat credit on capital goods. Corrective measures taken by the appellant but in subsequent financial year definitely does not make good irregular availment of CENVAT Credit during the previous year. No doubt the objective /idea of the Rule 4(4) of CENVAT Credit Rules, 2004 is to prevent the double benefit but as already discussed above, the appellant has failed to produce any evidence that double benefit which admittedly was claimed by him, as to actually been reversed for the relevant financial year.

9. As a result of this discussion, the case law as relied upon the appellant though holds good law, but is held not applicable to the facts and circumstances of the present case. Order under challenge is therefore, upheld and consequent thereto the appeal stand dismissed.

(Pronounced in the open Court on 10.06.2021)

**(RACHNA GUPTA)
MEMBER (JUDICIAL)**