IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA

REGIONAL BENCH – COURT NO. 1

Excise Appeal No. 151 of 2009

(Arising out of Order-in-Original No. 47/Commissioner/08 dated 26.12.2008 passed by the Commissioner, Central Excise & Service Tax, 143, New Baradwari, Sakchi, Jamshedpur – 831 001)

M/s. Nilachal Iron & Power Limited **: Appellant**
Ratanpura, Kandra

VERSUS

Commissioner of Central Excise and Service Tax **: Respondent**
143, New Baradwari, Sakchi,
Jamshedpur – 831 001

APPEARANCE:

Smt. Shreya Mundhra, Advocate, for the Appellant

Shri Prasenjit Das, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI ASHOK JINDAL, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. 77313 / 2025

DATE OF HEARING / DECISION: 19.08.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

The present appeal has been filed against the Order-in-Original No. 47/Commissioner/08 dated 26.12.2008, passed by the Commissioner, Central Excise, Jamshedpur.

2. The facts of the case are that M/s. Nilachal Iron & Power Ltd. (hereinafter referred to as "the appellant"/"NIPL"), is a Limited Company engaged in the manufacture of Sponge Iron falling under Chapter 72 of the Central Excise Tariff Act, 1985. The Appellant had its manufacturing plant at Ratanpur, Kandra and was registered with the Central Excise authorities.

2.1. During the period July 2005 to December 2005, NIPL had entered into an agreement with M/s. Tata Steel Limited (hereinafter referred to as "TSL") for conversion of iron ore supplied by TSL into sponge iron. As per the Purchase Order No. 2100053958/117 dated 08.04.2005, the arrangement was that TSL would supply iron ore to NIPL, and NIPL would process/manufacture the same into sponge iron and supply it back to TSL. The payment mechanism included job charges from TSL along with reimbursement of Central Excise duty.

2.2. A Show Cause Notice bearing C. No. V(72)(15)32/APP/ADJ/JSR/07 dated 31.07.2007 was issued jointly to TSL and NIPL. The main allegations in the Show Cause Notice were that TSL had availed irregular CENVAT Credit on the basis of invoices issued by NIPL, as investigation revealed that NIPL had allegedly not processed the iron ore received from TSL but had diverted it and supplied sponge iron procured from other sources at Barbil/Joda. The Show Cause Notice proposed *inter-alia,* disallowance of Cenvat Credit of Rs. 67,61,732/- against TSL and penalty of Rs. 62,20,990/- against NIPL under Rule 26(2) of Central Excise Rules, 2002 for wilfully passing on illegal benefit of CENVAT credit to TSL.

2.3. The said Notice was adjudicated by the Commissioner, Central Excise, Jamshedpur, wherein the Ld. Commissioner has disallowed CENVAT credit of Rs. 62,20,990/- availed by TSL and imposed penalty of Rs. 62,20,990/- on TSL under Rule 15(2) of CENVAT Credit Rules, 2004. Additionally, penalty of Rs. 10,00,000/- was imposed on TSL under Rule 26 of Central Excise Rules, 2002. As regards the Appellant/ NIPL, the Ld. Commissioner imposed a penalty of

Rs.62,20,990/- under Rule 26(2) of Central Excise Rules, 2002 on the ground that NIPL had facilitated TSL in wrongful availment of CENVAT Credit by issuing invoices without actual supply of goods manufactured from TSL's inputs.

2.4. Being aggrieved by the penalty imposed under Rule 26(2) of Central Excise Rules, 2002, NIPL has filed the present appeal before this Tribunal.

3. At the outset, the appellant has pointed out that TSL had filed an appeal against the Order-in-Original before the Tribunal. This Tribunal vide Final Order No. 75520/2023 dated 31.05.2023 in Excise Appeal No. 160/2009, has allowed the appeal of TSL and set aside the demand and penalties imposed on TSL; the Tribunal held that TSL was entitled to take CENVAT credit in terms of Rule 9 of the CENVAT Credit Rules, 2004 as it had taken the credit on the strength of invoices issued by the manufacturer (NIPL); the Tribunal specifically observed that it was not in dispute that M/s NIPL is having manufacturing facility and invoices have been issued by them.

3.1. The appellant submits that when the principal party TSL has been completely exonerated and held entitled to CENVAT Credit based on invoices issued by NIPL, it necessarily follows that the invoices issued by NIPL were valid and proper. It is their submission that the entire basis for imposing penalty on NIPL was that they allegedly facilitated wrongful availment of CENVAT Credit by TSL; since TSL has been held entitled to the credit, there remains no basis for penalizing NIPL.

3.2. It is their further submission that it is a well-settled principle of law that when the main issue has been decided in favour of one party, penalty cannot be imposed on another party for the same transaction. Accordingly, the appellant prayed for setting aside the penalty imposed on them.

4. The Ld. Authorized Representative of the Revenue reiterated the findings in the impugned order.

5. Heard both sides and perused the appeal documents.

6. We observe that in the impugned order, the Ld. Commissioner has disallowed CENVAT credit amounting to Rs. 62,20,990/- availed by TSL and imposed penalties on TSL as well as NIPL. In this regard, we find that the issue relating to credit availment by TSL has already been decided by this Tribunal vide *Final Order No. 75520 of 2023 dated 31.05.2023 in Excise Appeal No. 160 of 2009*, wherein it has been held that the credit availed by TSL is admissible. Further, it was held that no penalty is imposable on TSL.

6.1. In the said order, the Tribunal held that TSL would be entitled to take CENVAT credit in terms of Rule 9 of the CENVAT Credit Rules, 2004 as it had taken the credit on the strength of invoices issued by the manufacturer (NIPL). The Tribunal specifically observed as under:

> *"it is not in dispute that M/s NIPL is having manufacturing facility and invoices have been issued by them. As per Rule 9 of Cenvat Credit Rules, 2004, an assessee can take the credit on*

the inputs received from a manufacturer on the strength of duty paid on the invoices."

6.2. From the above, it is clear that when the principal party TSL has been completely exonerated and held entitled to CENVAT Credit based on invoices issued by NIPL, it necessarily follows that the invoices issued by NIPL were valid and proper. We observe that the entire basis for imposing penalty on NIPL was that they allegedly facilitated wrongful availment of CENVAT Credit by TSL. Since TSL has been held entitled to the credit, there remains no basis for penalizing NIPL. Accordingly, we hold that no penalty is imposable on NIPL and hence we set aside the penalty imposed on the appellant under Rule 26(2) of Central Excise Rules, 2002.

7. In view of the above discussions, we set aside the penalties imposed on the Appellant and allow the appeal filed by them, with consequential relief, if any, as per law.

(Operative part of the order was pronounced in open court)

Sd/-
(ASHOK JINDAL)
MEMBER (JUDICIAL)

Sd/-
(K. ANPAZHAKAN)
MEMBER (TECHNICAL)

Sdd