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

COURT HALL - III

Excise Appeal No.41836 of 2016

(Arising out of Order in Appeal No. 245/2016 (CXA-II) dated 29.6.2016 passed by the Commissioner of Central Excise, (Appeals – II), Chennai)

Welmech Engineering Company Pvt. Ltd. **Appellant**
No. 11A/1, Developed Plot
SIDCO Industrial Estate
Ambattur, Chennai – 600 098.

Vs.

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

APPEARANCE:

Smt. S. Sridevi, Advocate for the Appellant
Shri Anoop Singh, Authorised Representative for the Respondent

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HON'BLE SHRI M. AJIT KUMAR, MEMBER (TECHNICAL)

FINAL ORDER NO. 40196/2025

Date of Hearing : 22.01.2025
Date of Decision: 11.02.2025

This appeal is filed by the appellant against Order in Appeal No. 245/2016 (CXA – II) dated 29.6.2016 passed by the Commissioner of Central Excise (Appeals – II), Chennai (impugned order).

2. Brief facts of the case are that the appellant is engaged in the manufacture of furnace and parts of furnace falling under CETH 85141000 and 85149000 of the CETA, 1985. They were receiving services such as security and manpower supply from certain service providers. The service providers of such services had paid 100% of service tax payable and the appellant had taken credit of such amount

of service tax paid by them. As per Notification No. 30/2012-ST dated 20.6.2012, the extent of service tax payable by the service provider and service receiver will be 25% and 75% respectively. Thus the service providers were liable to pay 25% of the liability and the receiver the rest of 75%. But in the instant case, the service provider had paid the entire 100% of which the service receiver has taken credit of the 75% payable by them. As this availment was found to be ineligible, Show Cause Notice dated 10.2.2015 was issued to them. After due process of law, the Ld. Original Authority demanded an amount of Rs.2,89,685/- for the period from July 2012 to July 2013 under Rule 14 of the CENVAT Credit Rules, 2004 read with Section 11A(5) of the Central Excise Act, 1944 along with appropriate interest under Rule 14 read with sec. 11AA of the Act and also imposed equal penalty under Rule 15(2) of the Rules read with section 11AC of the Act. In appeal, the Ld. Commissioner (Appeals) upheld the adjudication order. Hence this appeal.

3. Smt. S. Sridevi, Ld. Advocate appeared for the appellant and Shri Anoop Singh, Ld. Authorized Representative appeared for the respondent.

3.1 The Ld. Advocate for the appellant submitted that they had availed credit of Service Tax which had been paid to the government, the mere fact that the tax was not paid in the ratio as per Notification No. 30/2012-ST dated 20.6.2012, was a procedural irregularity. There was no loss of tax to government and hence the credit of duty paid could not be denied. She relied on the decision of the Tribunal in **Sunil Steels Vs Commissioner of Central Excise, Raipur** [2017 (48) S.T.R, 266 (Tri. – Del)] in this regard and prayed that the appeal may

be allowed by setting aside the duty and interest demanded and the penalty imposed, with consequential relief.

3.2 The Ld. AR stated that this is a case where the appellant, apart for the duty paid by the service provider, was also eligible for a portion of the duty payable by him under the Reverse Charge Mechanism (RCM). Since no duty was paid by him as the entire duty was paid by the supplier of service, no credit on the portion of duty payable by him (appellant) and not so paid, could have been availed. The same hence needs to be reversed. He further reiterated the points given in the impugned order and prayed that the appeal may be rejected.

4. I have heard the rival parties and have carefully gone through the appeal papers. I find that there is no dispute that the entire amount of money payable as duty has been deposited to the govt account. There is also no allegation that the service providers are claiming a refund of the money paid by them towards duty. The question is whether the amount of money which was to be paid by the appellant under RCM, but paid by the service providers themselves can be considered as duty on which credit can be availed.

5. I find that while dealing with procedural matters where there is no loss of revenue a liberal view needs to be taken. A distinction between the provisions of a statute which are of substantive character and those which are merely procedural and technical in their nature needs to be distinguished, considering the facts of the case. The Hon'ble Apex Court in **Sugandhi Vs P. Rajkumar** [(2020) 10 SCC 706] held that if the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical

violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute.

6. As declared by Constitutional Courts, justice is the goal of jurisprudence, procedural, as much as substantive, hence procedural law should not be an obstruction but an aid to justice. Considering that the deviation from procedure in this case has not led to any loss of revenue, the rules of reason and justice would require that the impugned order be set aside and the appeal be allowed to succeed.

7. I accordingly set aside the impugned order. The appeal succeeds. The appellant is eligible for consequential relief as per law. The appeal is disposed of accordingly.

(Order pronounced in open court on 11.02.2025)

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

Rex