Customs, Excise & Service Tax Appellate Tribunal
West Zonal Bench At Ahmedabad

REGIONAL BENCH-COURT NO. 3

Excise Appeal No. 10318 of 2014- DB

(Arising out of OIA-AHM-CEX-003-COMM-035-13 dated 25/11/2013 passed by Commissioner of Central Excise-AHMEDABAD-III)

C M Smith Sons Ltd **........Appellant**
Plot No. 70-71,
Village Zark,
Dahegam, Gandhinagar

VERSUS

C.C.E. & S.T.-Ahmedabad-iii **......Respondent**
Custom House... 2nd Floor,
Opp. Old Gujarat High Court, Navrangpura,
Ahmedabad, Gujarat -380009

APPEARANCE:
Shri, S. J. Vyas, Advocate appeared for the Appellant
Shri Ajay Kumar Samota, Superintendent (AR) for the Respondent

CORAM: HON'BLE MEMBER (JUDICIAL), MR. RAMESH NAIR
HON'BLE MEMBER (TECHNICAL), MR. C.L.MAHAR

Final Order No. 11691/2023

DATE OF HEARING: 18.07.2023
DATE OF DECISION: 11.08.2023

RAMESH NAIR

The issue involved in the present case is that whether the appellant is entitled for Cenvat Credit in respect of steel items namely M.S. Channel, M.S. Beam, M.S. Plats, TMT bars, M.S. Rect. Bar, HR Coil etc.

2. Shri S.J. Vyas, Learned Counsel, appearing on behalf of the appellant submits that this issue is no longer res-Integra as the same is decided in the various Judgments. He submits that the entire contention of the department is based on larger Bench decision of this Tribunal in the case of Vandana Global Ltd, however, the same was reversed by the Hon’ble Chhattisgarh High Court. He submits that all the goods were used for making foundation of various plants and machineries in the factory, therefore the credit is admissible. He place reliance on the following judgments:

- Vandana Global Ltd. Vs. CCE 2010 (4) TMI 133 – CESTAT, New Delhi (LB)
- Commissioner of Central Excise And Service Tax, Daman Vs. Nr. Agarwal Industries 2014 (5) TMI 603- Gujarat High Court
- Patel Labour Contractor p Ltd Vs C.S.T.- Service Tax- Ahmedabad, 2014 (4) TMI 811 - CESTAT Ahmedabad
- Neogen Chemicals Ltd Vs. Commissioner of Central Excise 2014 (3) TMI 351 – CESTAT Mumbai
- M/s. Nalvetha Cast Steel Pvt. Ltd Vs. CCE Madurai 2014 (3) TMI 163 – CESTAT Chennai

3. Shri Ajay Kumar Samota, Learned Superintendent (AR), appearing on behalf of the revenue reiterates the finding in the impugned order.

4. On careful consideration of the submission made by both the sides and perusal of records, we find that even though there are judgments, according to which the appellant is *prima facie* eligible for Cenvat Credit on the steel items but before concluding the decision, it is necessary to establish the use of the goods. Because only on the basis of use of every goods, it can be ascertained that the goods are admissible input or capital goods, on which credit is available. The Learned Counsel had taken as to the Chartered Engineer's Certificate regarding use of the goods. From the certificate, we find that the same is very vague and the Chart enclosed along with the certificate does not give the detail of the goods on which credit was taken, quantum thereof, use thereof and the specific plant and machinery wherein the same was used. Therefore, on the basis of the given Chartered Engineer's Certificate, the use cannot be ascertained in respect of the goods in question for specific plants and machineries. Therefore, we are of the view that the appellant can be given opportunity to explain the use of the goods

before the Adjudicating Authority, so that final conclusion can be drawn applying the various Judgments passed subsequently to passing of the impugned order.

5. Therefore, we set aside the impugned order and allow the appeal by way of remand to Adjudicating Authority.

(Pronounced in the open court on 11.08.2023)

RAMESH NAIR
MEMBER (JUDICIAL)

C.L.MAHAR
MEMBER (TECHNICAL)

Raksha