IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
REGIONAL BENCH : ALLAHABAD
COURT No. I

APPEAL No.E/52905/2015-EX[SM]

(Arising out of Order-in-Appeal No. 148-CE/APPL-LKO/LKO/2015 dated 21/04/2015 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow)

M/s Maizapur Chini Mills **Appellant**

Vs.

Commissioner of Central Excise, Lucknow **Respondent**

Appearance:

Ms Stuti Saggi, Advocate for Appellant
Shri Gyanendra Kr. Tripathi, Asstt. Commissioner (AR), for Respondent

CORAM:

Hon'ble Mr. Anil Choudhary, Member (Judicial)

Date of Hearing	:	29/01/2018
Date of Decision	:	29/01/2018

FINAL ORDER NO-71017/2018

Per: Anil Choudhary

The present appeal is directed against Order-in-Appeal No. 148-CE/APPL-LKO/LKO/2015 dated 21/04/2015 passed by Commissioner of Central Excise & Customs (Appeals), Lucknow.

2. The issue in this appeal is whether the appellant is entitled to Cenvat credit taken on items during the period April, 2008 to March, 2011 being M.S. Steel Tube, M.S. Black Tube, H.R. Plate, M.S. Plate/Pipe, Hot Strip, Mill Plate and other similar items. Show cause notice dated 07/11/2012 was issued for the period April, 2008 to March, 2011 invoking the extended period of limitation, as

it appeared to revenue that total Cenvat credit of Rs.1,98,136/- was not available from Cenvat credit on the aforementioned items. Further, penalty was also proposed. The appellant contested the said show cause notice, contending that they have utilized the items in dispute for fabrication as well as repairs of plant and machinery. The details of which are as follows: –

Sl. No.	**Material Discription**	**Tariff Heading**	**Total duty involved**	**Used as component/Spare/Accessories of:**	**Tariff heading of Capital Goods**
1.	M.S. Black Tube	73063090	4235	Process Piping, Boiler : 35 TON, Pans1-6, Evaporator Sets, Crystalliser	8438.8402
2.	M.S. Steel Tube	73063090	3570	Process Piping, Boiler : 35 TON, Pans1-6, Evaporator Sets, Crystalliser	8438.8402
3.	HR Plate	72085210	74267	Parts of Boiler (D.M. Plant)	8402
4.	MS Black Tube	73063090	2356	Process Piping, Crystalliser	8438
5.	Trash Plate	84389010	2668	Mill No.1,2,3 & 4	8438
6.	HR Plate	72085210	6563	Molasses Storage Tank	8438
7.	MS Black Tube	73063090	1780	Process Piping	8438
8.	MS Plate	72085210	711	Bagasse Carrier	8438
9.	MS Plate	72085210	408	Boiler : 35 TON	8402
10.	MS Plate	72085210	21662	Molasses Storage Tank	8438
11	MS Plate	72085210	29659	Molasses Storage Tank	8438
12.	MS Pipe	73063090	5378	Process Piping	8438
13.	HR Plate	72085210	4051	Rake Elevator, Molasses Storage Tank	8438
14.	Hot Strip Mill Plate	72085210	25757	Juice Sulphiter, Cane Cutter for New Mill,	8438
15.	Mill Plate	72085210	15071	Fibrizer, Juice Sulphiter with Pre Limer	8438
		TOTAL	**198136**		

It was also contended that as the appellants have used the items of Iron and Steel in question, either in fabrication of capital goods or in repair and maintenance of existing capital goods, they are entitled to Cenvat credit either under Section 2(k) or Section 2(a)(A) of the Cenvat Credit Rules 2004. Items fabricated particularly Process Piping Boiler, Crystallizer, Evaporator, Parts of Boiler– D.M. Plant, Process Piping, Crystalliser, Molasses Storage Tank, Bagasse Carrier, Boiler, Juice Sulphiter, Cane Cutter for New Mills, etc. all falls under Chapter 84, which are the items fabricated by the appellant from the disputed items. It is further contended that the adjudicating authority gave a categorical findings in favour of the appellant by observing– *"I find that the party have used iron and steel items in question in maintenance and repairs of different capital goods in the factory of manufacturer as such fall within the ambit of Rule 2 (a)(A) (iii) of CCR, 2004 and none of the items have been used for laying foundation and supporting structures for capital goods as it is obvious from the End-use submitted by appellant and certified by the Engineer of the unit and the verification report of the Range Officer, Gonda."* Accordingly it was held that the appellant is eligible to take Cenvat credit on the items in dispute.

3. Being aggrieved, the revenue carried the matter before learned Commissioner (Appeals) who was pleased to allow the appeal of Revenue, by disallowing the Cenvat credit observing– "*Moreover, items of iron and steel used for the purpose of repair and maintenance of machinery get consumed and loose their identity and existence and so they failed to be goods which could satisfy the ingredients of the definition of terms 'Capital Goods' as defined in Rule 2 (a) (A) of CCR, 2004."* Further, relying on the judgment of Hon'ble Andhra Pradesh High Court in the case of Sree Rayalaseema Hi-strength Hypo Ltd. Vs Commissioner of Central Excise reported at AIT-2011-481-HC wherein the Hon'ble High Court has held– *"it is beyond doubt that unless the goods are used in the manufacture of capital goods, which are further used in the factory, they do not qualify as inputs. Repair and maintenance being distinct from manufacture, Cenvat credit cannot be claimed under*

Rule 2 (k) of the Rules, of 2004 on the duty paid on welding electrodes used for repairs."

Accordingly the learned Commissioner (Appeals) was pleased to disallow the Cenvat credit and further observed that as regards imposition of penalty– *"I find that the issue involved interpretation of provisions of law and contrary judgments of courts are available on this issue hence, I am of the view that no penalty may be imposed under the circumstances and accordingly, I refrain from imposition of any penalties in the matter".*

Being aggrieved, the appellant-assessee preferred appeal before this Tribunal.

4. Heard the parties.

5. Having considered the rival submissions, I find that it is admitted fact that the appellants have used the items under dispute in fabrication of capital goods which have been further used in production of excisable goods. In this view of the matter, I hold that the appellant is entitled to Cenvat credit on the items under dispute. Accordingly, the appeal is allowed and the impugned Order-in-Appeal is set aside. The appellant shall be entitled to avail Cenvat credit.

(Dictated in Court)

(Anil Choudhary)
Member (Judicial)

akp