CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Excise Appeal No. 62 of 2011

(Arising out of Order-in-Original No. 01/2010-CE(Commr) dt. 08/09/2010 passed by Commissioner of Central Excise, Trivandrum)

Commissioner of Central Excise and Service Tax,
ICE Bhavan, Press Club Road,
Trivandrum 695 001.
Appellant(s)

VERSUS

Kerala Minerals & Metals Ltd.,
Sankaramangalam, Chavara,
Kollam – 691 583. Kerala.
Respondent(s)

APPEARANCE:

Mr. Rajesh Shastry, Superintendent(AR) for the appellant.
None for the respondent.

CORAM:

HON'BLE Dr. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE Mr. PULLELA NAGESWARA RAO, MEMBER (TECHNICAL)

Final Order No. 20894 / 2023

Date of Hearing: 25/07/2023
Date of Decision: 25/07/2023

Per : DR. D.M.MISRA

This is an appeal filed by the Revenue against Order-in -Original No.01/2010-CE(Commr) dt. 08/09/2010 passed by Commissioner of Central Excise, Trivandrum.

2. None present for the respondent. Heard the learned AR for the Revenue.

3. Briefly stated the facts of the case are that the respondent are engaged in the manufacture of Titanium Dioxide, Beneficiated Ilmenite, Titanium Tetrachloride etc. falling under Chapter 26 and 28 of the Central Excise Tariff Act, 1985. During the period 2006-07, they have availed cenvat credit on the service tax paid by M/s. Garware Wall Ropes Ltd., Cochin for construction of storage tank for storage of hazardous wastes inside the factory premises. Alleging that the construction of storage tank has resulted in emergence of an immovable property, not liable to excise duty or service tax; hence credit availed on the service tax paid on construction service for construction of the storage tank is inadmissible, a show-cause notice was issued on 09/09/2009 for recovery of the credit of Rs.88,15,975/- and education cess of Rs.1,76,320/- with interest and penalty. On adjudication, the learned Commissioner dropped the demands. Hence the Revenue is in appeal.

4. Reiterating the grounds of appeal, learned AR for the Revenue has submitted that the storage tank which has been erected inside the premises of the respondent through civil work resulted into emergence of an immovable property which is different from the storage tank referred to in the definition of capital goods in Rule 2(a)(A)(vii) of CENVAT Credit Rules, 2004.

Therefore, the cenvat credit availed on the construction services for erection of storage tank inside the premises is inadmissible.

5. We have carefully considered the submissions of the learned AR for the Revenue and perused the records. We find that the learned Commissioner analysing the definition of input service provided in Rule 2(l) of CENVAT Credit Rules, 2004 held that the erection of storage tank inside the premises for storage of hazardous waste is a part of the activities relating to maintenance of environmentally sound management of such wastes and for active promotion of the transfer and use of cleaner technologies. Further referring to the definition of capital goods under Section 2(a) of CENVAT Credit Rules, 2004, the learned Commissioner has recorded that in the said definition, pollution control equipment and storage tank have specifically been included. Consequently, he has come to the conclusion that the cenvat credit availed on erection service of storage tank for storing of hazardous materials inside the factory premises is admissible. We do not see merit in the grounds of the appeal saying that the storage tank mentioned under the definition of capital goods and installation of the same inside the factory premises for storage of hazardous waste are having any different meaning from the definition of capital goods under Rule 2(a) of CENVAT Credit Rules, 2004 warranting separate treatment in allowing the cenvat credit on erection of storage tanks. We find that the Hon'ble Karnataka High Court in the case of ***CCE, Bangalore-II Vs. SLR Steels Ltd***. [2012(280) ELT 176

(Kar.)] held that CENVAT credit is admissible on storage tanks. The relevant paragraphs are reproduced below:-

> ***8.*** *Therefore, the notification of the Legislature is very clear that it is only the "inputs" used in the manufacture or construction of capital goods which is construed as input and cenvat credit is available on the duty paid in purchase of such inputs. If the cement, angles, channels, Centrally Twister Deform bar (C.T.D.) or Thermo Mechanically Treated bar (T.M.T.) and other items are used in the construction of factory shed, building or laying of foundation, the duty paid on such items the assessee would not be entitled to cenvat credit. Similarly, though the assessee is entitled to cenvat credit of cement and steel used in the manufacture of capital goods viz., storage tank, if any structure for support of capital goods is constructed and steel and cement is used for such support, the assessee is not entitled to the benefit of cenvat credit on the duty paid on such cement and steel. Therefore, there is no ambiguity in any of these provisions. When once a storage tank and pollution control equipment constitutes capital goods and any raw material purchased for construction of those goods, the duty paid could be utilized as a cenvat credit by the assessee notwithstanding the fact that the storage tank is an immovable property. Therefore, the appellate authority committed a serious error firstly in holding that the storage tank is an immovable property and secondly, on the ground that it cannot be bought and sold in the market, the criteria which is totally unwarranted under the circumstances. Therefore, the Tribunal was justified in setting-aside the said order and holding that the assessee is entitled to the benefit.*
>
> ***9.*** *In that view of the matter, we do not see any merit in this appeal. The substantial question of law is answered in favour of the assessee and against the revenue. Ordered accordingly.*

6. In view of the said judgment, we do not find merit in the appeal of the Revenue. Consequently, the impugned order is

upheld and the Revenue's appeal being devoid of merit is dismissed.

(Operative part of this order was pronounced in open court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(PULLELA NAGESWARA RAO)
MEMBER (TECHNICAL)

Raja...