CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
BANGALORE

REGIONAL BENCH - COURT NO. 1

Central Excise Appeal No. 2122 of 2011

(Arising out of Order-in-Original No. 14/2011-Commr. dated 28.03.2011 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Shree Renuka Sugars Ltd.
(Unit-IV),
Burlatti, Kokatnur,
Tal.Athani, Dist. Belgaum. — Appellant(s)

VERSUS

The Commissioner of Central Excise,
Belgaum Commissionerate,
No.71, Club Road,
Belgaum – 590 001. — Respondent(s)

With

Central Excise Appeal No. 2123 of 2011

(Arising out of Order-in-Original No. 17/2011-Commr. dated 30.03.2011 passed by the Commissioner of Central Excise and Customs, Belgaum.)

Shree Renuka Sugars Ltd.
(Unit-V),
Bhagyavnti Nagar,
Havalga, Tal.Afzalpur,
Dist.Gulbarga. — Appellant(s)

VERSUS

The Commissioner of C.Ex.,
Belgaum Commissionerate,
No.71, Club Road,
Belgaum – 590 001. — Respondent(s)

APPEARANCE:

Mr. Sunil Kadam with Mr. Rahul Patil, Company Representatives for the Appellant

Mr. H. Jayathirtha, Superintendent (AR) for the Respondent

CORAM: HON'BLE DR. D.M. MISRA, MEMBER (JUDICIAL)
HON'BLE MRS R BHAGYA DEVI, MEMBER (TECHNICAL)

Final Order No. 20433-20434 /2024

DATE OF HEARING: 05.02.2024
DATE OF DECISION: 05.02.2024

PER : DR. D.M. MISRA

These two appeals are filed against respective Orders-in-Original passed by the learned Commissioner of Central Excise, Belgaum. Since common issues involved, both these appeals are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that the appellants are engaged in the manufacture sugar and molasses falling under Chapter 17 of the Central Excise Tariff Act, 1985. They have availed cenvat credit on various inputs viz. cement, pipes Angles, Channels M.S. Plates, beams etc. falling under Chapter 72, 73, 83, 84, 25, 32, 38 etc. of CETAT, 1985, during the period June 2006 to June 2009 (appeal No.E/2122/2011) amounting to Rs.5,68,41,048/- and Rs.3,12,89,664/- (appeal No.E/2123/2011). Consequently, show-cause notices were issued to them for alleging credit on these items is not admissible, hence recoverable with interest and penalty. On adjudication, the learned Commissioner confirmed the demands with interest and penalty. Hence, the present appeals.

3. At the outset, the learned advocate for the appellant has submitted that they have availed the cenvat credit on various inputs viz. MS angles, MS channels, MS beams, MS joists, MS plates, CTD bars etc. falling under Chapter 72 and cement falling under Chapter 25 which were used in the factory for the manufacture of capital goods such as bagasse conveyor, cane unloader, boiler, storage tanks etc. and support structures for the capital goods used in the manufacture of the dutiable goods inside the factory. He has further submitted that in the impugned order following the judgment of the Larger Bench of the Tribunal in the case of ***Vandana Global Ltd. Vs. CCE&C, Raipur*** [2010(253) ELT 440 (Tri. LB)], the learned Commissioner has held that these items do not fall under the definition of

inputs. He has submitted that solely on the basis of principle laid down in the case of ***Vandana Global Ltd***., the demand has been confirmed. It is his contention that the principle laid down in ***Vandana Global Ltd***.'s case is no more a good law since it has been overruled by Hon'ble High Court of Chhattisgarh reported as ***Vandana Global Ltd. Vs. CCE&Cus., Raipur*** [2018(16) GSTL 462 (Chhattisgarh)]. He has further submitted that their lordships following the judgments of the Hon'ble Gujarat High Court in the case of ***Mundra Ports and Special Economic Zone Ltd. Vs. Commissioner*** [2015(39) STR 726 (Guj.)] and Hon'ble High Court of Madras in the case of ***Thiru Arooran Sugars Vs. CESTAT, Chennai*** [2017(355) ELT 373 (Mad.)] held that angles, joists, channels, beams, bars etc. used in the fabrication of capital goods and supporting structures be treated as inputs. He has further submitted that the Larger Bench of this Tribunal in the case of ***Mangalam Cements Ltd. Vs. CCE, Jaipur-I*** [2018(360) ELT 737 (Tri. LB)] also held that Cement and steel used in the structural items are admissible as inputs and decided the issue in favour of the assessee; therefore the impugned orders are liable to be set aside.

4. *Per contra*, learned AR for the Revenue reiterated the findings of the learned Commissioner.

5. Heard both sides and perused the records.

6. The short issue involved in the present appeals for consideration is: whether the appellant is entitled to avail cenvat credit on the MS angles, MS channels, MS beams, MS joists, MS plates etc. which were used in the fabrication of various machineries, support structures, platforms for machineries and equipments etc. used in the factory.

7. Undisputedly, the appellants during the relevant period used the aforesaid inputs in their factory in the fabrication / manufacture of various equipments, machineries, plants etc. and

support structures holding the capital goods. The learned Commissioner in the impugned order following the judgment of the Larger Bench of this Tribunal in ***Vandana Global Lt***d.'s case decided the issue against the appellants holding that credit is not admissible on the aforesaid inputs used in the fabrication of various capital items.

8.1. We find that the issue is no more *res integra* and covered by the judgement of Hon'ble Chhattisgarh High Court in ***Vandana Global's*** case, whereunder it is observed as follows:-

> ***"4.*** *In the light of the contents of the impugned order of the Tribunal and submissions of the assessee and the Revenue following substantial questions of law are formulated for consideration :*
>
> *(A) Whether the terms 'capital goods' excludes the structures embedded to earth?*
>
> *(B) Whether the goods like angles, joists, beams, bars, plates, which go into fabrication of such structures are not to be treated as 'input' used in relation to their final products as inputs for capital goods, or none of the above?*
>
> *(C) Is the amendment brought in CENVAT Credit Rules, 2004 as per Rule 2 of the CENVAT (Amendment) Rules, 2009 retrospective in nature considering is it clarificatory to be applied to all matters which arise before 7-7-2009, the date of commencement of the CENVAT (Amendment) Rules, 2009 : hereinafter referred to as 'Amendment Rules'.*
>
> ***5.*** *The impugned order of the Tribunal had come up for consideration before different High Courts either cited as precedent or as relied upon by the Tribunal in different other matters. The Gujarat High Court in Mundra Ports & Special Economic Zone Ltd. - 2015 (39) S.T.R. 726 (Guj.) referred to the contents of the amendment, to the extent it is relevant for the purpose of this case and held as follows :*
>
> *"We do not find that amendment made in the Cenvat Credit Rules, 2004 which come into force on 7-7-2009 was clarificatory amendment as there is nothing to suggest in the Amending Act that amendment made in Explanation 2 was clarificatory in nature. Wherever the Legislature wants to clarify the provision, it clearly mentions intention in the notification itself and seeks to*

> *clarify existing provision. Even, if the new provision is added then it will be new amendment and cannot be treated to be clarification on particular thing or goods and/or input and as such, the amendment could operate only prospectively."*
>
> ***6.*** *That view has been quoted with approval by the Madras High Court in M/s. Thiruarooran Sugars v. Customs, Excise and Service Tax Appellate Tribunal (CMA 3814/2014 and connections) decided on 10-7-2017 [2017 (355) E.L.T. 373 (Mad.)] to conclude that the said amendment cannot be treated as clarificatory. M/s. Thiruarooran Sugars also considered the issue as to the effect and fundamental value of the evidentiary statement made by the Finance Minister dealing with an amendment in the budget speech.*
>
> ***7.*** *Section 37 of the Central Excise Act, 1944; for short, 'the Act', is a rule making power. Section 37(2)(xvia) provide for the credit of duty paid or deemed to have been paid on the goods used in, or in relation to, the manufacture of excisable goods. Section 37(2A) of the Act - The power to make rules conferred by clause (xvi) of sub-section (2) shall include the power to give retrospective effect to rebate of duties on inputs used in the export goods from a date not earlier than the changes in the rates of duty on such inputs. Though the power to make rules include the power to give retrospective effect, while doing so the provision under consideration is neither made retrospective nor could it be treated as one.*
>
> ***8.*** *We are in complete agreement with the ratio of Mundra Ports (supra) and M/s. Thiruarooran Sugars (supra) on all fours.*
>
> ***9.*** *Resultantly, we answer the questions formulated in these appeals in favour of the assessees and against the Revenue."*

8.2. It followed the judgment of Hon'ble Madras High Court in the case of ***Thiru Arooran Sugars*** (supra) whereunder it is observed as follows:-

> ***43.*** *As would be evident from the aforesaid extract, in Rajasthan Spinning & Weaving Mills Limited case, the Court relied upon the user test, enunciated, in its earlier judgment rendered in : Jawahar Mills Limited case. Clearly, the Court held that steel plates and MS Plates, i.e., structurals used in the fabrication of the chimney, which were an integral part of the diesel generating set would fall within the ambit and scope of definition of capital goods. The Court, went on to*

further hold that such equipment had to be treated as an accessory. As a matter of fact, in Saraswathi Sugar Mills case, the Court, while noticing the view taken in Rajasthan Spinning and Weaving Mills Limited said that as long as it could be shown that the item in issue was an integral part of the machinery, i.e., capital goods, it would fall in the definition of 'component' and thus, by logical extension, come within the ambit of 'capital goods'.

43.1 *To be noted, Hon'ble Mr. Justice D.K. Jain, (as he then was), was party to both the judgments rendered by the Supreme Court i.e., Rajasthan Spinning and Weaving Mills Limited as well as Saraswathi Sugar Mills Limited case.*

43.2 *Therefore, quite clearly, the two judgments referred to above cannot be read in the manner, as the Revenue is seeking to read them, that is, at cross purposes. In our opinion, the ratio of the two judgments, is that, as long as it is shown that the "component" and/or "accessory" is an integral part of the capital goods, (which, in turn, fall within the scope and ambit of the expression 'capital goods', referred to in Rule 2(a)(A)(i) of the 2004 Rules,) they would also qualify as capital goods.*

44. *In the facts of this case, we have to conclude that MS structurals, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rule 2(a)(A) and 2(k) of the 2004 Rules.*

45. *For the foregoing reasons, we answer the questions, in all the three (3) appeals, which are set forth above, in favour of the assessees and against the Revenue.*

8.3. Also the Larger Bench of the Tribunal taking note of the various High Courts' judgment in the case of ***Mangalam Cement Ltd. Vs. CCE, Jaipur-I*** [2018(360) ELT 737 (Tri. LB)] held as follows:-

> ***8.*** *Applying the user test of 'capital goods' as enunciated by the Hon'ble Supreme Court in the case of Rajasthan Spinning & Weaving Mills (supra), the Hon'ble Madras High Court in the case of India Cements Ltd., reported in 2012 (285) E.L.T. 341 (Mad.), 2014 (305) E.L.T. 558 (Mad.), 2014 (310) E.L.T. 636 (Mad.) and 2015 (321) E.L.T. 209 (Mad.) has extended the Modvat benefit on Cement and steel items, considering the same as 'capital goods' under Rule 57Q of the erstwhile Central Excise Rules, 1944. Since, said rule is pari materia with the present Rule 2(a) of the CCR, 2004, the disputed goods, in the present case, should be considered as 'capital goods' for the purpose of the Cenvat benefit.*
>
> ***9.*** *On perusal of definition of 'input' extracted above, it would reveal that all the goods (excepting light diesel oil/high speed diesel oil and motor spirit) are considered to fall under such definition, when 'used in or in relation to manufacture of final products', whether directly or indirectly, and whether contained in the final product or not. The only condition required to be fulfilled is that the goods must be used within the factory of production. Further, Explanation 2 appended to such definition clause provides that 'input' includes goods, which are used in the manufacture of capital goods for further use in the factory of the manufacturer. On a conjoined reading of the definition of input and Explanation 2 appended thereto, it makes the position clear that inputs are not only goods, which are used in the manufacture of final products, but also those which are 'used in or in relation to' the manufacture of the final product. The relationship between those goods and the final product could be either direct or indirect and may include or may not include their presence in the final products. Goods used in the manufacture of capital goods, which are installed for manufacture of the capital goods should also be considered for availment of Cenvat credit. In the case in*

hand, the cement and steel bars used to erect foundations for installing different machines in the power plant should also merit consideration as 'input' for the purpose of cenvat benefit. Analyzing and interpreting scope of the definitions of 'input' and 'capital goods', the Hon'ble Madras High Court in the case of M/s. Thiru Arooran Sugars & Ors. (Civil Misc. Appeal Nos. 3814/2011 and 2695 and 2696/2012) has held that steel and cement used for laying of foundation for erection of capital goods should be eligible for the cenvat benefit under the present set of rules. The relevant paragraph in the said order is extracted herein below :-

> *"44. In the facts of this case, we have to conclude that MS structural, which support the plant and machinery, which are, in turn, used in the manufacture of sugar and molasses are an integral part of such plant and machinery. The assessee has clearly demonstrated that structurals as well as foundations, which are erected by using steel and cement are integral part of the capital goods (i.e., plant and machinery), as they hold in position the plant and machinery, which manufactures the final product. Therefore, in our opinion, whether the "user test" is applied, or the test that they are the integral part of the capital goods is applied, the assessees, in these cases, should get the benefit of Cenvat credit, as they fall within the scope and ambit of both Rules 2(a)(A) and 2(k) of the 2004 Rules."*

10. *In view of above analysis, we are of the considered opinion that the eligibility to duty credit of the disputed goods cannot be denied. Such eligibility either as 'capital goods' (accessories) or as 'inputs' has been examined and upheld by various decisions of the Hon'ble Apex Court and the Hon'ble High Courts as above. Accordingly, we answer the reference in favour of the appellant. The appeal file is returned to the referral Bench for a decision on merit.*

9. In view of the aforesaid precedent, the impugned orders are devoid of merit and accordingly the same are set aside.

Appeals are allowed with consequential relief to the appellants, if any, as per law.

(Operative part of this Order was pronounced in Open Court on conclusion of the hearing)

(D.M. MISRA)
MEMBER (JUDICIAL)

(R BHAGYA DEVI)
MEMBER (TECHNICAL)

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